

Exhibit List

- A- 1st police Report
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- D- Negligence per se & violations of NHRA
- E- NHRA itself
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- H- January trip texts - (proof of trip)
- I- texts proving door was kept locked
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- L- death certificate Mr. Wu
- M- pages showing ms. giebell prepared medications (first hand knowledge)
- N- Texts & journal showing matches of medications of patient # 10, to Mr. Wu.
- O- patient # 10's report - odh survey - obtained through ^{foia}
- P- Notarized letters to police - trying to get out of warning?
- Q- Article stating hospice complaints / suits by others
- R- Not assigned
- S- Ohio Jurisprudence quote on communicating false info
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- U- Texts proving days worked with Mr. Wu
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- X- Not assigned
- W- Diagram & photos of outside of house & yard

exhibit A
Show cause to allow police
Reports

§ 3009

CRIMINAL LAW

the defendant, unless the sources of information or other circumstances indicate lack of trustworthiness.⁸⁷ In other words, matters observed by police officers, when such evidence is not offered by the defendant, are excludible. The phrase, "excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel," prohibits the introduction of reports that recite an officer's observations of criminal activities or observations made as part of an investigation of criminal activities. This phrase does not prohibit the introduction of records of a routine, intra-police, or machine maintenance nature, such as intoxilyzer calibration logs. Such routine records are highly likely to be reliable, and are precisely the type contemplated as admissible by the public records exception to the rule against hearsay.⁸⁸

A law enforcement agency's investigative report is to be considered proof of the facts stated therein, and the fact that such report contains conclusions, or that some of the statements may contain hearsay, does not make any part of the report incompetent evidence.

◆ **Observation:** A computer print-out is inadmissible under the hearsay rule to establish the element of theft in a theft-related offense. The court of appeals in *Sims* opined that a computer print-out report is not reliable and trustworthy proof that an object has been stolen, adding that errors commonly occur in the recording, retention, and retrieval of computer information, and that a conviction for a theft-related offense cannot stand where a necessary element of the crime is demonstrated solely by reference to hearsay in

87. Evid R 803(8), discussed more fully in 43 O Jur 3d, Evidence and Witnesses § 440.

Annotations: Admissibility, over hearsay objection, of police observations and investigative findings offered by government in criminal prosecution, excluded from public records exception to hearsay rule under Rule 803(8)(B) or (C), Federal Rules of Evidence, 56 A.L.R. Fed. 168.

88. Evid R 803(8), discussed more fully in 43 O Jur 3d, Evidence and Witnesses § 440.

89. *State v. Ward*, 15 Ohio St.3d 474 N.E.2d 300 (1984).

90. *In re Grow*, 7 Ohio Misc.2d 454 N.E.2d 618 (Ct. Cl. 1983).

As to documentary evidence generally, see §§ 3056 et seq.

Exhibit A
1/9

I N C I D E N T D A T A	Agency Name Dublin Police Department		INCIDENT/INVESTIGATION REPORT										Case# 18-001941													
	OR# OH0250300												Date / Time Reported 08/01/2018 14:28 Wed													
	Location of Incident 4075 W. Dublin Granville Rd, Dublin OH 43017-		Premise Type				Zone/Tract				Last Known Secure 01/16/2018 09:00 Tue															
											At Found 08/01/2018 14:28 Wed															
V I C T I M	#1	Crime Incident(s) Incident Only INCIDENT ONLY				(Com)		Weapon / Tools				Activity														
								Entry		Exit		Security														
	#2	Crime Incident				()		Weapon / Tools				Activity														
								Entry		Exit		Security														
	#3	Crime Incident				()		Weapon / Tools				Activity														
								Entry		Exit		Security														
	O T H E R S I N V O L V E D	# of Victims 0		Type:		Injury:																				
V1		Victim/Business Name (Last, First, Middle)				Victim of Crime #		DOB		Race		Sex		Relationship To Offender		Resident Status		Military Branch/Status								
								Age																		
		Home Address										Home Phone														
		Employer Name/Address										Business Phone		Mobile Phone												
VYR		Make		Model		Style		Color		Lic/Lis		VIN														
CODES: V- Victim (Denote V2, V3) O = Owner (if other than victim) R = Reporting Person (if other than victim)																										
Type: INDIVIDUAL/ NOT LAW ENFORCEMENT																										
Code		Name (Last, First, Middle)				Victim of Crime #		DOB		Race		Sex		Relationship To Offender		Resident Status		Military Branch/Status								
RP		BROWN, CODY						Age		M																
		Home Address 4075 W Dublin-granville Rd Dublin, OH 43017										Home Phone														
		Employer Name/Address Heartland Care, Same As Above (DIR OF ADMIN)										Business Phone 614-210-0541		Mobile Phone												
Type: INDIVIDUAL/ NOT LAW ENFORCEMENT																										
Code		Name (Last, First, Middle)				Victim of Crime #		DOB		Race		Sex		Relationship To Offender		Resident Status		Military Branch/Status								
IO		WU, SHIS KIN						02/20/1935		A		M				Resident										
		Home Address 4075 W Dublin-granville Rd Dublin, OH 43017										Home Phone														
		Employer Name/Address										Business Phone		Mobile Phone												
1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Stolen 6 = Seized 7 = Recovered 8 = Unknown ("OJ" = Recovered for Other Jurisdiction)																										
P R O P E R T Y	VI #	Code	Status From To	Value	OJ	QTY	Property Description				Make/Model				Serial Number											
Officer/ID#		JONES, T. C. (1116)																								
Invest ID#		(0)																								
Status	Complainant Signature				Case Status Dpd - Closed				08/03/2018				Supervisor LATTANZI, G. M. (1251)				Case Disposition: Closed				08/03/2018				Page 1	
	R_CS1.LBR				Printed By: MENKCA, MENKCA-7				Sys#: 26992																	

Incident Report Additional Name List

Dublin Police Department

OCA: 18-001941

Additional Name List

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) IO 2	WU, KUEI		05/27/1957	61	A	F
	Address 7547 Dear Valley Xing, Powell, OH 43065-		H: 614-378-5919			
	Empl/Addr		B: - -			
			Mobile #: - -			
2) IO 3	WU, KEVIN		07/08/1986	32	A	M
	Address 1020 E Broadway Ste B, Columbia, MO 65201-		H: 614-378-5634			
	Empl/Addr		B: - -			
			Mobile #: - -			
3) IO 4	GIEBELL, JACQUELINE					F
	Address		H: 276-920-0396			
	Empl/Addr		B: - -			
			Mobile #: - -			

INCIDENT/INVESTIGATION REPORT

Dublin Police Department

Case # 18-001941

Status Codes	1 = None	2 = Burned	3 = Counterfeit / Forged	4 = Damaged / Vandalized	5 = Stolen	6 = Seized	7 = Recovered	8 = Unknown
D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type			
Assisting Officers RICKENBACHER, K.E. (1790)								

Suspect Hate / Bias Motivated:

NARRATIVE

The administrator of Heartland of Dublin called Dublin Police to report a third party complaint of abuse to one of their residents.

Aug/03/2018 10:26:29 AM

Dublin Police Dept (Records) 614-410-4947

4/9

614-4920
410

CASE SUPPLEMENTAL REPORT

Printed: 08/03/2018 10:54

Dublin Police Department

OCA: 18001941

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: **DPD - CLOSED**

Case Mng Status: **CLOSED - CLOSED**

Occurred: **01/16/2018**

Offense: **INCIDENT ONLY**

Investigator: **JONES, T. C. (1116)**

Date / Time: **08/02/2018 09:12:46, Thursday**

Supervisor: **LATTANZI, G. M. (1251)**

Supervisor Review Date / Time: **08/02/2018 10:22:27, Thursday**

Contact:

Reference: **Patrol Supplement**

On 8-1-18 at 1244 hrs, Heartland of Dublin administrator, Cody Brown called Dublin Police to report a claim by a third party of abuse to one of their residents. Ofc. T.C. Jones #127 and K. Rickenbacher #136 responded to the scene and spoke to Brown.

Brown stated that previous caretaker for resident Shis Wu, Jackie Geibell had sent a letter to the regional director of operations, Jason Hohlefelder alleging observing signs of abuse to Wu. The observations were made in Jan of 2018 and again in May 2018 when she visited the Heartland facility where Wu is a current resident. (see attached letter). She alleged that a most likely a family member was abusing Wu and that there was bruising on his torso. She said she felt it wasn't Heartland staff members as she saw the injuries while Wu was in Va as well. It is unclear if she reported any of her concerns to police authorities in Va and a radio check of CAD showed that no contact was made by Geibell to Dublin Police.

Brown said per protocol they launched an investigation, part of which included a physical examination of Wu. (see progress notes report). No injuries were reported. Brown said a report was filed with ODH. Brown said Wu is incoherent most of the time and primarily speaks Taiwanese, giving yes or no answers. He said they attempted to interview him using language line with few results.

I asked Brown if he could accompany Rickenbacher and I to meet with Wu and to attempt an interview and observe his torso and other body areas to see if there were any obvious injuries.

Wu was in his room in bed with his ex wife and POA holder Kuei Wu and son Kevin Wu. He was unresponsive and I pulled up his pajama top and observed his stomach and back. I also observed his legs and arms. I did not see any obvious signs of recent or past injury, abrasions or bruising to Wu.

I spoke to Kuei Wu. She said she has never physically harmed Wu in any way and has not noted any injuries to him when he was in Va or at the current facility. Kuei Wu said that Geibell was hired, known to Wu's other son Jen Wu while Wu was in Va. Kuei Wu said that Geibell had never made her concerns known to her previously but they came to light when she left a cell phone for Wu on her last visit and Kuei Wu disapproved. Both Geibell in her letter and Kuei Wu point to an argument over the phone and what she categorized as an unannounced visit to Wu in May by Geibell.

Kuei Wu is the POA for Wu and she said that she doesn't want calls, texts or any other future contact with Geibell. In addition Kuei Wu doesn't want Geibell to visit Wu at Heartland. Kuei Wu and her son, Kevin inquired about a

Investigator Signature

Supervisor Signature

Not true

CASE SUPPLEMENTAL REPORT

Printed: 08/03/2018 10:54

Dublin Police Department

OCA: 18001941

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Case Status: DPD - CLOSED

Case Mng Status: CLOSED - CLOSED

Occurred: 01/16/2018

Offense: INCIDENT ONLY

Investigator: JONES, T. C. (1116)

Date / Time: 08/02/2018 09:12:46, Thursday

Supervisor: LATTANZI, G. M. (1251)

Supervisor Review Date / Time: 08/02/2018 10:22:27, Thursday

Contact:

Reference: Patrol Supplement

restraining order against Geibell. I advised them to block her cell number and if she called to tell her not to call anymore. In addition they could contact the agency with jurisdiction (Powell or DCSO) to file a telecommunication harassment report if they receive any more calls, depending upon the location.

1-740-833-2800
1-865-885-5605

I spoke to Kevin Wu. He said that several different number come up on the caller ID when Geibell calls. I attempted to call the last number listed and got no answer. I asked Kevin Wu if he'd ever physically injured his father or known of anyone else purposefully injuring him. He said no. I also asked him if he'd ever seen any physical signs of injury to Wu. He said no.

Brown said he had finished his investigation and he could find no signs of abuse to Wu. Brown said that due to Kuei Wu's request to not allow Geibell to see Wu, Geibell would not be welcome on the facilities grounds. In addition Brown would like all contact from Geibell to go through their legal department. I advised him that his legal staff should probably draft a certified letter banning her from the property and directing her where and how to send any further correspondence to the facility through their office.

At this time I am ending my involvement in the case. Neither Rickenbacher, nor myself could not see any obvious signs of injury or abuse to Wu. Kuei Wu and Kevin Wu denied any instances of abuse to Wu or having seen any signs of injury to him in the past. I am unaware what the primary reporting responsibilities are for healthcare workers in Va., or even Geibell's status as one, but no contact was made by her to Dublin Police concerning her concerns during her visit in May of this year.

Investigator Signature

Supervisor Signature

Dear Regional Director of Operations, Jason Hohlefelder;

I appreciate the quick resolution of my last problem I reported to the company hotline.

However, I have a couple more things that will require more explanation and I thought it best to write them down in a letter to you.

My main reason for writing the letter is to provide information about a serious issue with a patient that is in the Heartland facility at Dublin, Ohio. And secondly, to protect my visitation rights with this same patient.

Before I get started with my concerns, I would like to introduce myself. The patient I will be referring to, is Mr Wu, Room 132A. I took care of Mr Wu when he was in Virginia, for 5 weeks in Dec 2016. And again last summer from May to September. Then Mr Wu went back to the Heartland Rehab. At that time, I was neither fired or dismissed from my position of caregiver of Mr. Wu, and assumed he might be coming back to Virginia at some point, as before.

I have a serious concern regarding Mr Wu. I have been monitoring this problem since January. I have been making regular trips from Virginia to visit Mr. Wu. at the Heartland facility. On one of these trips, January 16, 2018, I noticed a dark purple bruise on Mr Wu's stomach. I was quite shocked because it was the same marks that I healed up 2 rounds of in Virginia last summer. Because of this, I can speak with confidence and say that the marks were NOT caused by anyone working at the Heartland facility. Because it has to be someone who had access to him, both in Virginia, and in Ohio.

I checked the sign in sheet, and Mr. Wu had no visitors the week before my January visit (when I believe the marks were made). So I was able to conclude from that, that the marks were caused by someone who didn't sign in. I saw the marks when Mr Wu pulled the curtain to put the 'itch medicine' on his stomach. Then I saw the mark. I know from experience with healing up 2 rounds of bruises, that it takes approximately 3 weeks to heal up the marks and after a week or so, it starts to heal and itch. That's how I can say with reasonable certainty when the marks were caused. Also during my trip in May, I saw healed up marks on the opposite side of his stomach, I have not seen since August of last year. So the abuse was ongoing.

I got into an argument with Mrs. Wu during my trip in May, because I did not let her know I was coming to visit Mr. Wu. I did not tell her I was coming because she had been taking the phone away from Mr Wu when I called some. And I talked to him on one occasion and he started crying. Things have not been very good between us since then.

Because the marks in January were made right before my visit, I decided not to give any advance notice of my visits much. Because of this problem.

It is very important to me to maintain contact with Mr. Wu, as I am the only one who can identify the marks on him. And if I cannot be there to help Mr. Wu, it would only be easier for the abuser to continue the abuse.

I spoke with the administrator, and another manager about the abuse. But it was 'downplayed' and seemed like it wasn't taken seriously. But the 'healed up marks' are clearly visible on his stomach.

Want caught or be hurt anymore. "Someone is hitting him."

Reporting this has been very hard for me. Mr Wu is very quiet and a private person. That's why I chose to monitor the situation at first. When Mrs. Wu tried to force me out in May, Cody and Mariel intervened in my behalf. But I was worried that I would be forced out, and then what would happen to Mr Wu. So then I decided that I should say something.

My loyalty is very strong for Mr. Wu, and my boss, his son in Virginia. I feel I cannot allow Mr. Wu to be dishonored like this, without speaking out in his behalf.

I have included some paperwork, that I think might be helpful with the visitation issue.

Thank you for your concern and help with this problem.

Chubb

Sincerely,

Jacqueline Diebell

Jacqueline Diebell

Admitted Jan 1st. →

Mrs. Wu -

X-wife & Divorced -

- BIMS of 6 slightly competent. -

Wife visits every day. ^{M-F} Mr. Wu is not able to be his own person.
- No bruises on him currently

Ms. Wu is POA

Jackie -

* Did you make arrangements with a local A.L. to visit.

* Nothing on the nursing notes from Jan.
* Nothing on admission related to skin issues.

Cared for him Dec. 2016
May - Sept 2012 2017

- Up to day Ms. Wu was OK with calling & visiting

Would like to speak w/ him every day.

LAST July did not see, only heard.

Same bruise last summer → Thought it was his boss - His Son; Thought it might be

T.D. 11/1/12

Dear Ken,

Thank you for letting me have this 4 months with Mr Wu and Jen.

I have enjoyed this summer very much, despite Mr Wu falling and all.

Also, I appreciated all your support last winter, and your encouragement, while I was waiting on Mr Wu to go to Jen's place.

I was also glad Jen gave me extra time to be with Mr Wu this last month. That day Jen say he was very worried for me. He try hard to hide his emotions, but was very worried for me, that day. I was really happy to see that because I believed that the good emotions was there all along, not just us fighting.

I feel bad Mr. Wu has to go back to the rehab, but glad he will get to see you. You are his wife, and he needs to spend time with you, now.

Thanks for all your encouraging texts this summer, also, I needed them.

I'm hoping to come & see Mr Wu on haloween.

Sincerely,
Jackie

Heartland 



Cody Brown, LNHA
Administrator

cody.brown@hcn-manorcare.com
hcn-manorcare.com

4075 W. Dublin Granville Rd.
Dublin, Ohio 43017-1436
614.356.4080
614.467.3814 fax
614.381.4485 cell

CASE SUPPLEMENTAL REPORT

Printed: 08/23/2018 16:20

Exhibit B

OCA: 18001941

Dublin Police Department

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: DPD - CLOSED

Case Mng Status: CLOSED - CLOSED

Occurred: 01/16/2018

Offense: INCIDENT ONLY

Investigator: JONES, T. C. (1116)

Date / Time: 08/06/2018 10:11:53, Monday

Supervisor: KEIFFER, K. (1149)

Supervisor Review Date / Time: 08/07/2018 14:33:48, Tuesday

Contact:

Reference: Patrol Supplement

At the direction of Det. Sgt. Krayner #108 I reinterviewed Brown and spoke to nurse Dezaray Thomas who did the "head to toe" examination of Mr. Wu on 7-31-18.

In addition I took photos of Mr. Wu where Ms. Giebell stated she had seen signs of injury.

Brown said Wu was initially a resident at Heartland on January 13, 2017 until Oct 10th when he moved to Va to live with his son Jin.

→ Also not true I took care of Mr. Wu May 12, 2017 to Sept 20 2018

Brown said that Wu moved back into the facility on Jan 1st, 2018. A physical examination is done on patients who are away from their facility for more than 24 hrs, according to Brown, such as an overnight hospital stay. Brown is attempting to locate that report. He reiterated that the staff there are primary reporters and that any signs of injury or abuse are required to be reported to the police and ODH.

Brown described Mr. Wu as currently being non responsive in a "failure to thrive" situation, sleeping most of the time. I asked Brown what Wu was like in 2017. He said that he was mobile using a wheel chair. Brown said Wu used to wheel around the facility but not converse with anyone as Brown, Kevin and Keui Wu have all stated that Wu didn't and doesn't speak english.

→ Not true I have videos of him speaking english

Brown stated at this time Geibell can still visit Wu since he has not been deemed incompetent by a physician and would have to indicate to staff that he didn't want to see her. Brown said Wu is going to be examined by a doctor in the next day or so. If the Dr. deems Wu to be incompetent, the POA Kuei Wu has would take effect and they would address her wishes of not allowing Geibell to visit Wu. Brown said his main focus is the safety of his residents and the complete investigation of the allegation of abuse of Mr. Wu.

I met with Dezaray Thomas, LPN who did Wu's head to toe assessment. I asked her to explain the phrase "scattered dark pigmentation noted to left, right side of abdomen and bilateral lower extremities". Thomas stated that it meant Wu had differing color patches of skin on various areas of his body, none of which she attributed to a current or previous injury. I asked Thomas if she had seen any other evidence of previous or current injury to Wu when she did her assessment. She said she had not. Thomas was left a witness statement to fill out.

✓ a lie, pictures taken by police show numerous 'healed up' marks and also dark purple bruises,

Investigator Signature

Supervisor Signature

exhibit c

COMMUNICATIONS

Event Report

Event ID: 0182-190-509

Call Ref #: 900

Date/Time Received: 08/07/18 18:55:08

Rpt #:	Prime 169	Services Involved			
Call Source: PHONE	Unit: TRAVES, DAVID Q	LAW			
Location: 6665 COMMERCE PKWY		Jur: CAD	Service: LAW	Agency: DPD	
X-ST:		St/Beat: D4	District:	RA:	
Business: DUBLIN JUSTICE CENTER	Phone: (614) 888-1112			GP: D403	
Nature: 19R-PHONE MESSAGE	Alarm Lvl: 1	Priority: 6	Medical Priority:		
Reclassified Nature:					
Caller: GIEBELL, JACKIE	Phone: (276) 228-5848	Alarm:		Alarm Type:	
Addr:					
Vehicle #:	St:	Report Only: No	Race:	Sex:	Age:
Call Taker: ALGIPM	Console: DISPCON2-7				
Geo-Verified Addr.: Yes	Nature Summary Code: STAP	Disposition: A	Close Comments:		
<p>Notes: Mrs. Giebell called yelling at this calltaker regarding an incident that occurred at the heartland of dublin- she referenced 169 /136/183/127- she was upset this calltaker didn't know what other agency had jurisdiction over heartland of dublin - and became more upset when told Dublin Police have jurisdiction there and said 183 had told her two other agencies had jurisdiction- she was upset i had no answers regarding the incident- multiple times she was offered to speak to 169's supv or the Sgt on duty to which she refused- she finally asked for the 18 for Powell Pd and DCSO and the Chief's name- which she was given- she advised she would follow up with 183 tomorrow after 22 minutes of yelling at this calltaker upset because i did not know why 169 told her she was being charged with telecommunications harassment and why it didn't get dropped because 183 said it would because he had spoke to cooperate at Heartland of Dublin- email sent to 183 regarding incident [08/07/18 23:43:01 SKIPSR] [08/07/18 23:45:29 SKIPSR]</p> <p>CORR USE HOUSE PHONE (5848) [08/07/18 20:39:19 BANTJW]</p> <p>HAVE HIM CALL 276-920-0928 [08/07/18 20:14:59 ALGIPM]</p> <p>This is a reopened incident. [08/07/2018 20:14:40 ALGIPM]</p> <p>[08/07/18 20:14:23 ALGIPM]</p> <p>for 169 [08/07/18 18:55:48 ALGIPM]</p>					

Times

	Time From Call Received	
Call Received: 08/07/18 18:55:08		Unit Reaction: 001:32:42 (1st Dispatch to 1st Arrive)
Call Routed: 08/07/18 18:57:17	000:02:09	En-Route: 001:32:42 (1st Dispatch to 1st En-Route)
Call Take Finished: 08/07/18 18:57:17	000:02:09	On-Scene: 000:08:45 (1st Arrive to Last Clear)
1st Dispatch: 08/07/18 19:29:59	000:34:51 (Time Held)	
1st En-Route: 08/07/18 21:02:41	002:07:33	
1st Arrive: 08/07/18 21:02:41	002:07:33 (Reaction Time)	
Last Clear: 08/07/18 21:11:26	002:18:18	

Radio Log

Unit	Empl ID	Type	Description	Time Stamp	Comments	Close Code	User
169	4119	D	Dispatched	08/07/18 19:29:59	Stat/Beat: D2		BANTJW
169	4119	DX	DispatchXY	08/07/18 19:29:59	1797804.05,787383.35		BANTJW

Exhibit D

News

August 27, 2019

Nursing Home Reform Act violations can be part of negligence lawsuit, court says



Danielle Brown



A family member suing a skilled nursing facility for negligence can move forward with her lawsuit that cites the Federal Nursing Home Reform Act, a court ruled this week.

While the U.S. District Court for the Middle District of Georgia agreed that Ange Davis can't sue directly for violations in the Act, she can move forward with negligence per se claims. Davis is suing Golden Living Center in Tifton, GA, related to her mother's death in 2016, in which she says the care violated federal law.

Golden Living argued the Federal Nursing Home Reform Act was not intended for private right of action. But the court said Davis' mother is who the law was meant to protect.

Her mother "belongs to the class of persons the statute was intended to protect as she was a resident of a long-term care facility, the alleged harm she suffered was of the same harm the regulations were intended to protect against, and even if, at this juncture, the Court cannot say with certainty that Defendant's violation of those regulations proximately caused the inju

ries suffered by Plaintiff's mother. a causal connection exists between the violation and the harm suffered," the court wrote.

Golden Living did not return calls by production deadline.

ALSO ON MCKNIGHT'S LONG-TERM CARE NEWS



12 days ago • 6 comments

More than 80% of all COVID-19 deaths in Canada are from ...



11 days ago • 7 comments

The administration's failure to "adequately prepare for the COVID-19 pandemic" ...



11 days ago • 1 comment

The Global Council on Br... Health has released a set of recommendations ...



McKnight's Long-Term Care News Comment Policy

Please read our [Comment Policy](#) before commenting.



0 Comments

McKnight's Long-Term Care News

[Disqus' Privacy Policy](#)

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Share

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Start the discussion...

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McKnight's Long
Term Care News

OR SIGN UP WITH DISQUS

Name

Email

Password

exhibit E

(F) Right to privacy/confidentiality/communication

Right to personal privacy in accommodations, medical treatment, written and telephonic communications, personal care, visits and meetings with family and resident groups	4: U § 2: (1
---	--------------------------

Right to privacy in oral, written, and electronic communications	4:
--	----

Right to reasonable access to and privacy in use of electronic communications such as email and video communications and for Internet research	4:
--	----

Right to reasonable access to telephones and to make and receive confidential calls, including the right to retain and use a cellular phone at the resident's expense	2: §
---	---------

Call Now: 888.818.1439

VIEW BL



Do I Have A Case? 888.8

HOME ELDER ABUSE NEGLIGENCE INJURIES LEGAL ACTION ASSISTED LIVING RESOURCES ABOUT US 888.81

Nursing Home Reform Act

Home > Resources > Nursing Home Reform Act

The Nursing Home Reform Act (NHRA) was established to ensure that nursing home residents receive the "highest practicable" mental, physical, and psychosocial wellbeing. The Nursing Home Reform Act enforces quality care and the provision of certain services to nursing home residents. Additionally, it establishes a Bill of Rights for residents.

The Nursing Home Reform Act is in place as a guideline for facilities that wish to receive state funding for Medicare and Medicaid services. Facilities receiving funding are required to meet the criteria set forth by the Nursing Home Reform Act. The state is responsible for certifying nursing home facilities that substantially comply with these criteria.



Nursing Home Reform Act Background

Congress asked the Institute of Medicine to conduct a study to evaluate the quality of care in U.S. Medicare and Medicaid nursing homes. The results of this 1986 study revealed that nursing home residents were often neglected, abused, and cared for inadequately. As a solution to these issues, the Institute of Medicine proposed a series of sweeping reforms. In 1987, many of these reforms became law, including the Nursing Home Reform Act. The Act was part of the 1987 Omnibus Budget Reconciliation Act.

Residents' Bill of Rights

Under the Nursing Home Reform Act, nursing home residents are entitled to a basic set of rights. These rights are in place to protect each resident's privacy, individuality, dignity, and medical needs. The Nursing Home Reform Act's Bill of Rights ensures that each resident receives a standard of care that is free from abuse, isolation, and improper medical treatment.

The Residents' Bill of Rights provides residents with the right to:

- Privacy
- Accommodation of physical, mental, and psychosocial needs
- Communicate freely
- Be treated with dignity
- Be free from mistreatment, abuse, and neglect

FREE Case Evalu

Fill out this form for
FREE Case Evaluation

Your Name*
Your Email*
Your Phone Number*
Tell us about your legal issue*

☐ I'm not a robot

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Cases We Handle

Elder Abuse

Negligence

Injuries

Legal Action

Assisted Living

Resources

Women and Elder Abuse
Veterans Elder Abuse
Types of Nursing Home Employee Advocacy

<https://nursinghomeabuseguide.com/resources/nursing-home-reform-act/>

8/9/2018

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[Federal Nursing Home Reform Act \(OBRA'87\)](#)

Federal Nursing Home Reform Act (OBRA'87) Law and Legal Definition

Barasch McGarry Law Firm

Lawyers For The 9/11 Community
68 Cancers Linked to 9/11 Toxic Dust.
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VIEW

▶ × Nursing Home Reform Act (OBRA'87) is a federal law that sets some standard of care and establishes certain rights for elderly persons in the U.S. The provisions of the Act are contained in Omnibus Budget Reconciliation Act of 1987 (OBRA'87). The Act requires the states and federal government to inspect nursing homes and to enforce standards by using a range of sanctions. Nursing homes are

required by law to provide residents with regular evaluations, complete care plans, nursing services, social services, rehabilitation, pharmaceutical care, dietary services and a full-time social worker. Some of the rights of nursing home residents conferred under the law are:

1.to admit and discharge oneself.

- 2.to be informed about and to control one's own medical care.
- 3.to choose physician and treatment.
- 4.to administer drugs and to see medical records.
- 5.to be free from any physical or chemical restraints.
- 6.to manage own financial matters.
- 7.to receive or refuse visitors and access to a private telephone.

► Legal Definition list

- » Federal Nursing Home Reform Act (OBRA'87)
- Federal Nuclear Operations Corps' Study (f/federal-nuclear-operations-corps-study/)
- Federal Noxious Weed Act (f/federal-noxious-weed-act/)
- Federal Natural Resource Management Agencies (f/federal-natural-resource-management-agencies/)
- Federal National Mortgage Association [FNMA] (f/federal-national-mortgage-association-fnma/)
- Federal Ocean Acidification Research and Monitoring Act (f/federal-ocean-acidification-research-and-monitoring-act/)
- Federal Offense (f/federal-offense/)
- Federal Office [Federal Elections] (f/federal-office-federal-elections/)
- Federal Officeholder (f/federal-officeholder/)
- Federal Official (f/federal-official/)
- Federal Parcel (f/federal-parcel/)

► Related Legal Terms

- 21st Century Nanotechnology Research and Development Act of 2003 (2/21st-century-nanotechnology-research-and-development-act-of-2003/)
- 3-A Sanitary Standards and Accepted Practice (3/3-a-sanitary-standards-and-accepted-practice/)
- 30-Year Contract [Agriculture] (3/30-year-contract-agriculture/)

Exhibit F

HEALTH CARE PROVIDERS AND HEALTH CARE PROVIDERS § 110

2. RESIDENTS' RIGHTS [§§ 110-132]

a. RIGHTS [§§ 110-116]

Definitions

As used in the statutes governing patients' rights:³⁶

"Home" means a home as defined in the statutes governing rest homes and nursing homes,³⁷ any facility or part of a facility not so defined which is authorized to provide extended care services under the Social Security Act, or a county home or district home.³⁸

"Resident" means a resident or a patient of a home.³⁹

"Administrator," with respect to a home, means a nursing home administrator with respect to a facility or part of a facility which does not meet the definition of home but is authorized to provide extended care services, it means the administrator of the facility or part of the facility, and with respect to county or district homes, it means the administrator.⁴⁰

"Adult relative, friend, or guardian of a resident" means an adult relative, friend, or guardian of a resident who has an interest in or responsibility for the resident's welfare.⁴¹

Illustration: As an adult relative, friend, or guardian of a nursing home resident who had interest or responsibility in the resident's welfare, the husband of nursing home resident who was notified as a "sponsor" under the statute affording certain rights to nursing home residents and, thus, had standing to sue the nursing home and its vice president of nursing for violations of his wife's rights.⁴²

36. RC § 356 N.E.2d 324 (C.P.

40. RC § 3721.10(C).

As to the definition of "nursing home administrator," see § 134.

For discussion of county and district homes, see O Jur 3d, Public Welfare §§ 95-112.

41. RC § 3721.10(D).

42. Belinky v. Drake Center, Inc., 117 Ohio App. 3d 497, 690 N.E.2d 1302 (1st Dist. Hamilton County 1996), appeal not

Ohio Code
3721.10
(D)
3721.13
sponsor

V [icons] 09:42P
(+16143785919)
Mar 15, 2017 8:05

Ok, i will call u !
If they are ask u .
just said urs mr.
Wu friend !

Options Back

V [icons] 01:02A
-16143785919) V
Mar 15, 2017 8:12

Because ur all day
there with mr wu
. so they will ask
u !

Options Back

V [icons] 12:41M
i(+16143785919)
Mar 15, 2017 8:15

it's ok, I tell them
I took care of him
in virginia

Options Back

V [icons] 10:38P
-16143785919) V
Mar 15, 2017 8:17

Just said friend !

Options Back

V [icons] 12:30A
6143785919) W
Mar 15, 2017 8:18 ,

It's better!

Options Back

Exhibit 2

V [icons] 12:46A
16143785919) W
Mar 15, 2017 8:22

ok, but some
people already
know i'm from
virginia.

Options Back

V [icons] 12:55A
Wu Kuei(61437859
Mar 15, 2017 8:27 ,

don't worry.
everybody is nice
to me, there.

Options Back

exhibit #

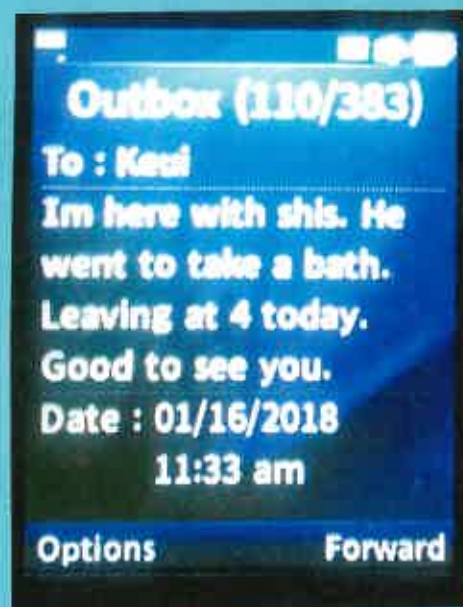
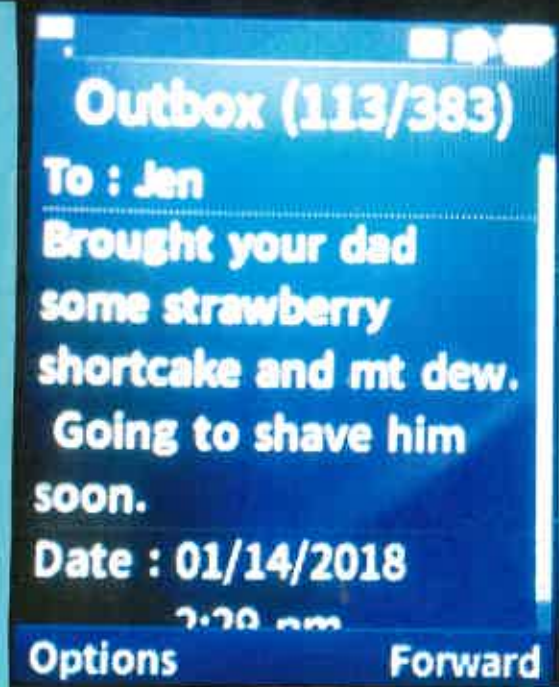
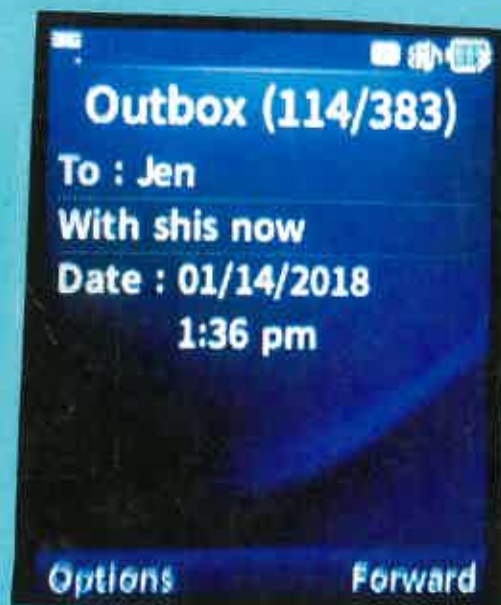
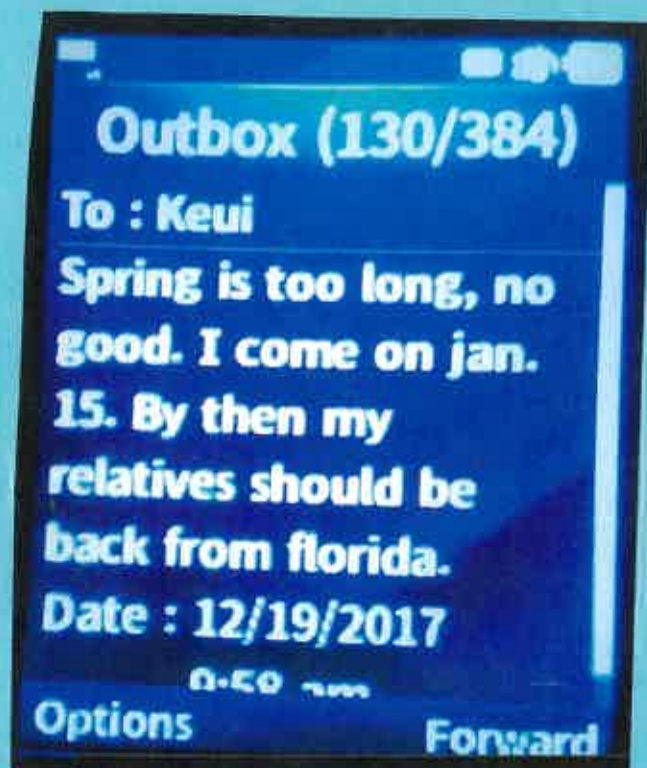


EXHIBIT 1

exhibit 1

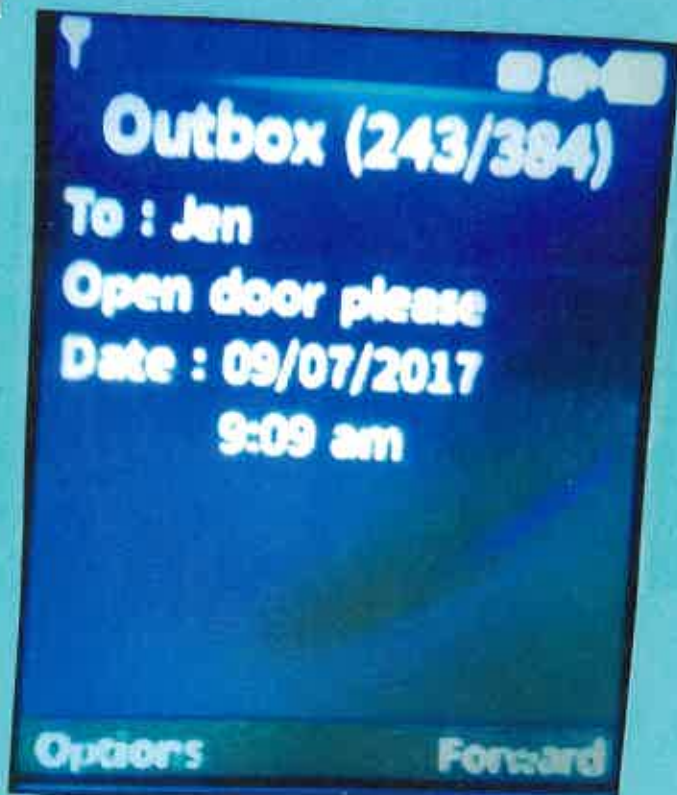
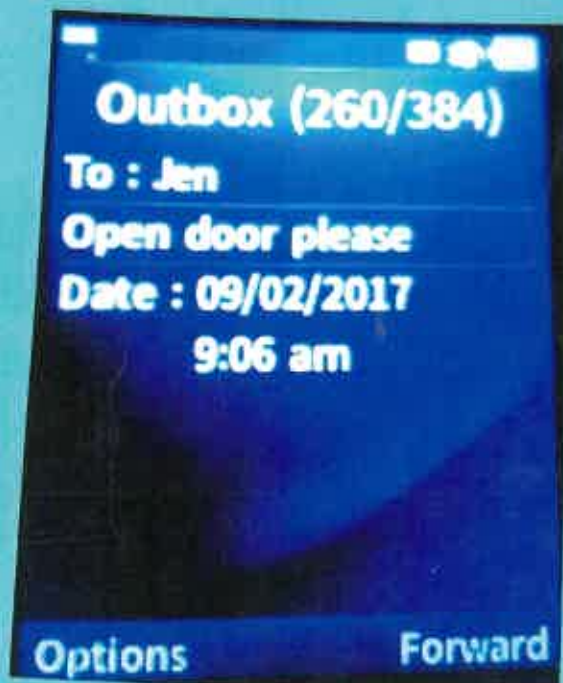
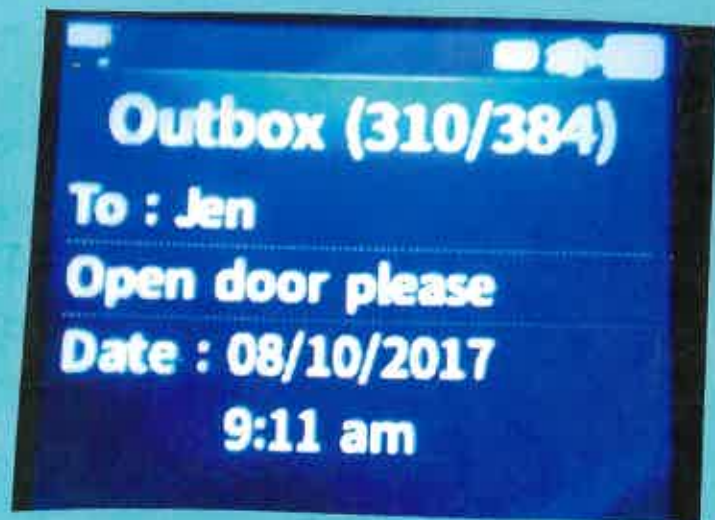
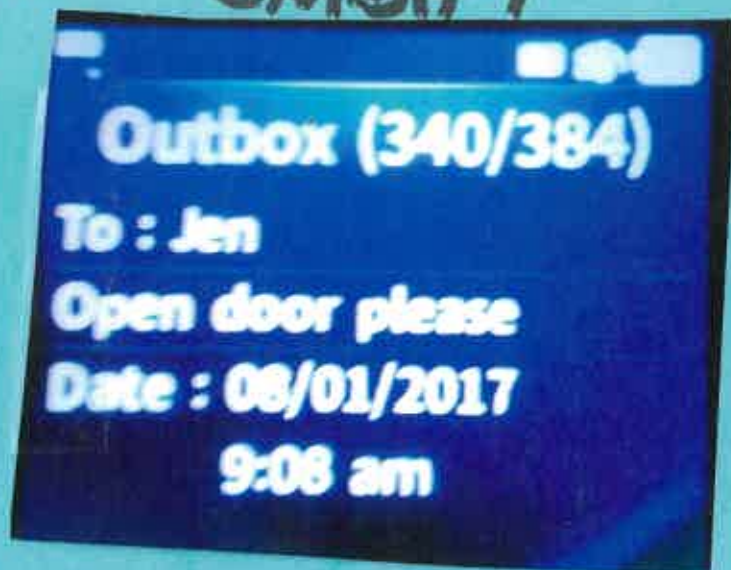
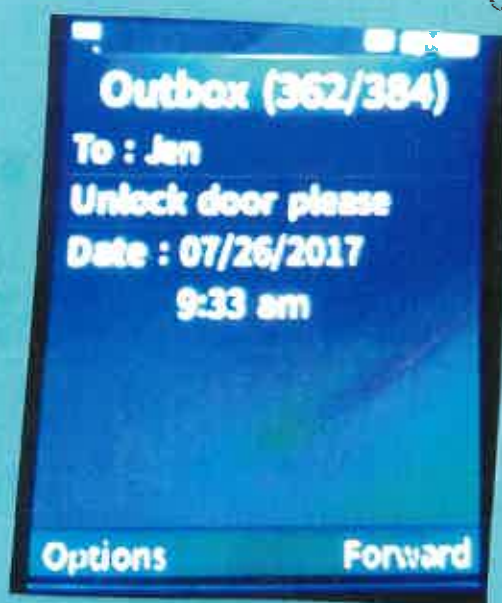






exhibit K

LAWriter® Ohio Laws and R
Route: Ohio Revised Code • Title [29] XXIX CRIMES - PROCEDURE • Chapter 29
ADMINISTRATION

2921.03 Intimidation.

- A) No person, knowingly and by force, by unlawful threat of harm to any person or property, or otherwise using a materially false or fraudulent writing with malicious purpose, or in a wanton or reckless manner, shall attempt to influence, intimidate, or obstruct a servant, party official, or witness in the discharge of the person's duty.
- B) Whoever violates this section is guilty of intimidation, a felony of the third degree.
- C) A person who violates this section is liable in a civil action to any person harmed by intimidation, injury, death, or loss to person or property incurred as a result of the commission of the offense, reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecution commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

Effective Date: 11-06-1996.

2921.04 Intimidation of attorney, victim or witness in criminal case or delinquent child action proceeding.

(A) No person shall knowingly attempt to intimidate or hinder the victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding, and no person shall knowingly attempt to intimidate a witness to a criminal or delinquent act by reason of the person being a witness to that act.

(B) No person, knowingly and by force or by unlawful threat of harm to any person or property or by unlawful threat to commit any offense or calumny against any person, shall attempt to influence, intimidate, or hinder any of the following persons:

(1) The victim of a crime or delinquent act in the filing or prosecution of criminal charges or a delinquent child action or proceeding;

(2) A witness to a criminal or delinquent act by reason of the person being a witness to that act;

(3) An attorney by reason of the attorney's involvement in any criminal or delinquent child action or proceeding.

(C) Division (A) of this section does not apply to any person who is attempting to resolve a dispute pertaining to the alleged commission of a criminal offense, either prior to or subsequent to the filing of a complaint, indictment, or information, by participating in the arbitration, mediation, compromise, settlement, or conciliation of that dispute pursuant to an authorization for arbitration, mediation, compromise, settlement, or conciliation of a dispute of that nature that is conferred by any of the following:

(1) A section of the Revised Code;

(2) The Rules of Criminal Procedure, the Rules of Superintendence for Municipal Courts and County Courts, the Rules of Superintendence for Courts of Common Pleas, or another rule adopted by the supreme court in accordance with section 5 of Article IV, Ohio Constitution;

(3) A local rule of court, including, but not limited to, a local rule of court that relates to alternative dispute resolution or other case management programs and that authorizes the referral of disputes pertaining to the alleged commission of certain types of criminal offenses to appropriate and available arbitration, mediation, compromise, settlement, or other conciliation programs;

(4) The order of a judge of a municipal court, county court, or court of common pleas.

(D) Whoever violates this section is guilty of intimidation of an attorney, victim, or witness in a criminal case. A violation of division (A) of this section is a misdemeanor of the first degree. A violation of division (B) of this section is a felony of the third degree.

Form No. 100-101

Ohio Department of Health - Vital Statistics

Form No. 201005192

Register No. 201809182

CERTIFICATE OF DEATH

1. Deceased's Legal Name (Print, Middle Initial, Surname)		2. Sex		3. Date of Death (Month/Day/Year)	
SHIH KIN WU		MALE		SEPTEMBER 04, 2018	
4. Date of Birth (Month/Day/Year)		5. Place of Birth (Country)		6. Date of Death (Month/Day/Year)	
08/01/1957		TAIWAN		SEPTEMBER 04, 2018	
7. Residence at Date of Death (Street, City, State, Zip)		8. Residence at Date of Death (Country)		9. Residence at Date of Death (County)	
700 DEER VALLEY CROSSING 43065		DELAWARE		POWELL	
10. Marital Status at Date of Death		11. Date of Marriage (Month/Day/Year)		12. Date of Divorce (Month/Day/Year)	
DIVORCED (AND NOT REMARRIED)					
13. Highest Grade Completed		14. Date of Death (Month/Day/Year)		15. Date of Death (Month/Day/Year)	
9TH GRADE NO DIPLOMA		NO		CHINESE	
16. Place of Death (Street, City, State, Zip)		17. Date of Death (Month/Day/Year)		18. Date of Death (Month/Day/Year)	
700 DEER VALLEY CROSSING 43065		SEP 04 2018		SEP 04 2018	
19. Name of Physician (Print, Middle Initial, Surname)		20. Name of Physician (Print, Middle Initial, Surname)		21. Name of Physician (Print, Middle Initial, Surname)	
ZHEN J WU		LAL RENNE		SON	
22. Name of Physician (Print, Middle Initial, Surname)		23. Name of Physician (Print, Middle Initial, Surname)		24. Name of Physician (Print, Middle Initial, Surname)	
KEVIN WU		SON		700 DEER VALLEY CROSSING	
25. Name of Physician (Print, Middle Initial, Surname)		26. Name of Physician (Print, Middle Initial, Surname)		27. Name of Physician (Print, Middle Initial, Surname)	
HEALTH CARE FACILITY		DUBLIN, OH 43018		POWELL, OH 43065	
28. Name of Physician (Print, Middle Initial, Surname)		29. Name of Physician (Print, Middle Initial, Surname)		30. Name of Physician (Print, Middle Initial, Surname)	
RONALD L DONALD		000074		RUTHERFORD FUNERAL HOME	
31. Name of Physician (Print, Middle Initial, Surname)		32. Name of Physician (Print, Middle Initial, Surname)		33. Name of Physician (Print, Middle Initial, Surname)	
REMOVAL FROM STATE - WESTERN CEMETERY, WYNNVILLE, OH		480 W CLEMENT ST		POWELL, OH 43065	
34. Local Registrar		35. Date of Death (Month/Day/Year)		36. Date of Death (Month/Day/Year)	
Sandra Taylor		SEP 10 2018		SEP 10 2018	
37. Date of Death (Month/Day/Year)		38. Date of Death (Month/Day/Year)		39. Date of Death (Month/Day/Year)	
2018		09		10	
40. Date of Death (Month/Day/Year)		41. Date of Death (Month/Day/Year)		42. Date of Death (Month/Day/Year)	
2018		09		10	
43. Date of Death (Month/Day/Year)		44. Date of Death (Month/Day/Year)		45. Date of Death (Month/Day/Year)	
2018		09		10	
46. Date of Death (Month/Day/Year)		47. Date of Death (Month/Day/Year)		48. Date of Death (Month/Day/Year)	
2018		09		10	
49. Date of Death (Month/Day/Year)		50. Date of Death (Month/Day/Year)		51. Date of Death (Month/Day/Year)	
2018		09		10	
52. Date of Death (Month/Day/Year)		53. Date of Death (Month/Day/Year)		54. Date of Death (Month/Day/Year)	
2018		09		10	
55. Date of Death (Month/Day/Year)		56. Date of Death (Month/Day/Year)		57. Date of Death (Month/Day/Year)	
2018		09		10	
58. Date of Death (Month/Day/Year)		59. Date of Death (Month/Day/Year)		60. Date of Death (Month/Day/Year)	
2018		09		10	
61. Date of Death (Month/Day/Year)		62. Date of Death (Month/Day/Year)		63. Date of Death (Month/Day/Year)	
2018		09		10	
64. Date of Death (Month/Day/Year)		65. Date of Death (Month/Day/Year)		66. Date of Death (Month/Day/Year)	
2018		09		10	
67. Date of Death (Month/Day/Year)		68. Date of Death (Month/Day/Year)		69. Date of Death (Month/Day/Year)	
2018		09		10	
70. Date of Death (Month/Day/Year)		71. Date of Death (Month/Day/Year)		72. Date of Death (Month/Day/Year)	
2018		09		10	
73. Date of Death (Month/Day/Year)		74. Date of Death (Month/Day/Year)		75. Date of Death (Month/Day/Year)	
2018		09		10	
76. Date of Death (Month/Day/Year)		77. Date of Death (Month/Day/Year)		78. Date of Death (Month/Day/Year)	
2018		09		10	
79. Date of Death (Month/Day/Year)		80. Date of Death (Month/Day/Year)		81. Date of Death (Month/Day/Year)	
2018		09		10	
82. Date of Death (Month/Day/Year)		83. Date of Death (Month/Day/Year)		84. Date of Death (Month/Day/Year)	
2018		09		10	
85. Date of Death (Month/Day/Year)		86. Date of Death (Month/Day/Year)		87. Date of Death (Month/Day/Year)	
2018		09		10	
88. Date of Death (Month/Day/Year)		89. Date of Death (Month/Day/Year)		90. Date of Death (Month/Day/Year)	
2018		09		10	
91. Date of Death (Month/Day/Year)		92. Date of Death (Month/Day/Year)		93. Date of Death (Month/Day/Year)	
2018		09		10	
94. Date of Death (Month/Day/Year)		95. Date of Death (Month/Day/Year)		96. Date of Death (Month/Day/Year)	
2018		09		10	
97. Date of Death (Month/Day/Year)		98. Date of Death (Month/Day/Year)		99. Date of Death (Month/Day/Year)	
2018		09		10	
100. Date of Death (Month/Day/Year)		101. Date of Death (Month/Day/Year)		102. Date of Death (Month/Day/Year)	
2018		09		10	

Sandra Taylor, Franklin County Registrar

SEP 10 2018

exhibit L
w/ death
certificate



exhibit M

Friday — May 12

Today I came at noon. His was sleeping. I let him sleep & did other chores, etc... Then gave him a bath & lotion & helped him get dressed. He went & ate while I changed his bed & did laundry. Cleaned the bathtub, also. After his ate, I shaved him. Then washed his feet & put lotion on them. After that he laid down awhile. I read notes from Ken's & the rehab.

Friday - May 19

I got here at noon. Shis took a shower after sleeping in for a little bit. Changed trash & cleaned the potty chair. Took his pills around 12:30 p.m. & ate his lunch at 12:50 p.m. I vacuumed the floor. Brought a clean Bathrobe for Shis (New & freshly washed) for after his shower. (He always says he is cold.) I shaved him & put a little lotion on his face. Filled up the pill dispenser. Shis didn't feel like exercising today.

Wednesday - May 31,

I got here a little early today. Talked to Jen about the medicine. Also fixed medicine in the new container I bought. Jen will give to him when I'm not here. Gave Shis a shower & lotion. Vacuumed the floor & took out the trash. He took lunch meds at 12:20pm. Then I shaved him & gave him a foot massage. He ate snacks after his shave. Shis seems to be walking much better today. I'm happy about that.

Monday - June 12

I got here at 11:55 a.m. A little early. Gave Shis a shower & lotion & clean clothes. Changed the bed & put a clean pad on it. Doing laundry today. Vacuumed & changed the trash. Shaved. Shis put lotion on his face. He is sleeping in the chair, will massage his feet. Let him take a nap in the ~~new~~ bed. Shis took his lunch pills at 2:45 p.m. Ate lunch from the restaurant at 3 p.m. I did the pills for the week. ~~A~~ One Bottle of pills had the wrong pills in the top & cotton between them & the right pills in the bottom ~~we're~~ Brought a Brand New Black Fan for Shis room. It's too hot in here! Shis has been relaxed & napping this afternoon, he is enjoying having the fan. Also sleeping better with it. Shis had his evening pills at 5:55. He ate some yogurt at 6:15 p.m.

Monday - June 19

I got here at 11:45 a.m. A little early. Mr Wn (Shis) had his head down in the River. Was asleep again. He went to the toilet, but had no success with the poo poo deal. Gave him a shower. Treated his sores with betadine & polig ointment. Lotion to his body. Clean clothes. I vacuumed the floor. Took out the trash. Took BP was 108/62 in a relaxed position. Am doing medicine today & refilling it. Took lunch pills at 1:40 p.m. He is eating potato salad and crackers. No laundry today. No Shave. Came Shis an ^{now} enema he is trying to poo. Did a little walking before I left.

Sunday - June 25

I got here about 11:45 am. Shis was eating. I vacuumed & emptied the potty. Am doing laundry today. Gave Shis a shower & lotion & ointment to Sores. Lotion to body & clean clothes & diaper. Changed the bed today. Washed dishes. Refilled the medication tray. Massaged his feet. He took his lunch pills at 1:30 pm. BP 130/80. Shis is walking pretty good, now. Shis is eating & snacking at 2 pm. Stayed a little over today, cause Shis was eating.

Friday - June 30

Shis was a little restless last night.

Called Kuei at 2 am. She called me.

Apparently, Shis couldn't wake me up.

I told her he kept me awake at night.

Slept OK the rest of the night, but very

sleepy this morning. Was trying to walk

with his eyes closed. Finally got him to pee

& to the shower & dressed. Lotion to his

body & ointments to sores (which are looking

better) He took his pills around 9 a.m. Ate

at 9:20 a.m. Had egg & Apple in oatmeal & os.

Got Shis settled back at the restaurant

& checked out of the motel. Clean clothes

AGAIN! YA!! He took his pills at 12:55 p.m.

Is eating a good lunch, too! I washed

up the dirty clothes. Vacuumed the floors

and emptied the trash. Shis still kind of

has a cough. Coughed up a lot of mucus

(clear) at 3:30 p.m. Took BP. It was 110/70.

Massaged his feet some. ~~Re~~ Refilled medication tray.

Evening pills at 5:55 p.m. Shis supper after that.

Back to bed at 7 p.m.

July 6 - Thursday

I got here at 9:25 a.m. Took BP 136/78, at 9:40 a.m. Shis says he did not sleep good last night. Time he took meds this morning is unknown? Shis ate his breakfast around 10 a.m. I fixed the pills this morning for the week. After breakfast, Shis took a shower & had lotion, ointments & clean clothes. Then laid down & took a nap. Got back up & took [lunch pills around 12 p.m.] Doing laundry today. Shis ate his lunch at 12:20 p.m. Vacuumed & took out the trash. Cleaned out leftover food from the frig.

August 4, Friday

I got here at 9:10 or so. Shis sitting with walker in the window chair. He seen Pine. Kevi sent a text & said he had to poo. I take him to toilet, no results. But he said he poo yesterday. I gave him a shower early & then took him to take morning pills around 9:30 a.m. Do laundry this morning. Also refilled medications. Shis ate a good breakfast & then laid down for awhile. Got up & took lunch pills at 12:30 p.m. Had a good nap. Also drank a banana milkshake. Vacuumed earlier & cleaned laundryroom sink. 100/64 BP.

August 29, ~~3~~ Tuesday

I got here around 9:10 a.m. Sh's in bed.
Let him pee & took him to shower. But first
he took his morning pills at 9:15 a.m. Got
out of the shower & had clean clothes & lotion.
Then he ate some French toast ^{I made} & scrambled eggs
jen brought. Also a apple, banana. He laid
back down after that. I bleached the potty
chair basin. No laundry today. Sh's took a
2 hour nap & then got up to pee. I was
vacuuming. He took ^{lunch} pills at 12:10 p.m.
Ate around 12:30 p.m. I made fresh curry
chicken & noodles for him & jen brought green beans
& rice. He also had leftover eggplant & garlic.
(R) hand Trimm'd his fingernails while he was waiting
to eat. I worked on the medications (filling
them up) laid back down after lunch.

Sept 15, Friday

I got here around 9:15 a.m. Gave Shis his morning pills. He was sitting in the chair & I took him to the shower & then gave him ~~fresh~~ fresh diaper & clean clothes & Afta lotion. He was sleepy during breakfast & fell asleep on the dais when I went to empty the potty chair. Luckily I had the pillow in the chair & he didn't fall out! He ate scrambled egg I fixed him, sausage & blueberry waffles. Apple juice, also. Laid back down at 11:20 a.m. Did a small load of clothes. Vacuumed, then got Shis up & took him outside. Rode around awhile, took some pictures, also came back. Got back & Shis took his (lunch pills) at 12:45 p.m. or so. Ate strawberry shortcake for lunch & Rice with ok & vegetables. Very quiet today. Did medications in the box. BP 100/60 1:45

exhibit N

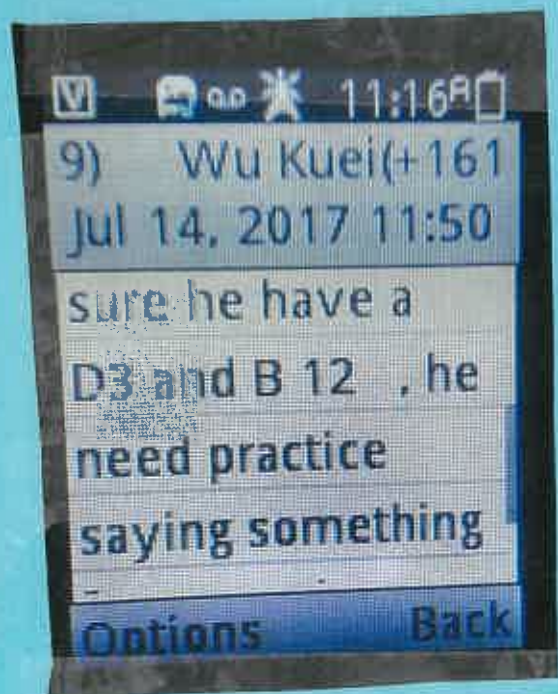
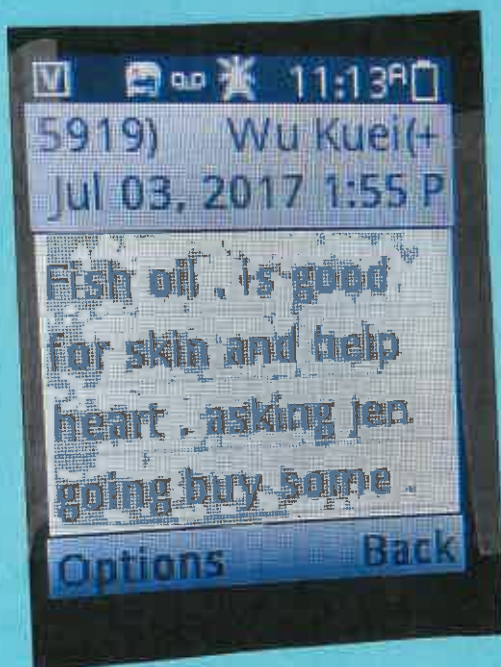
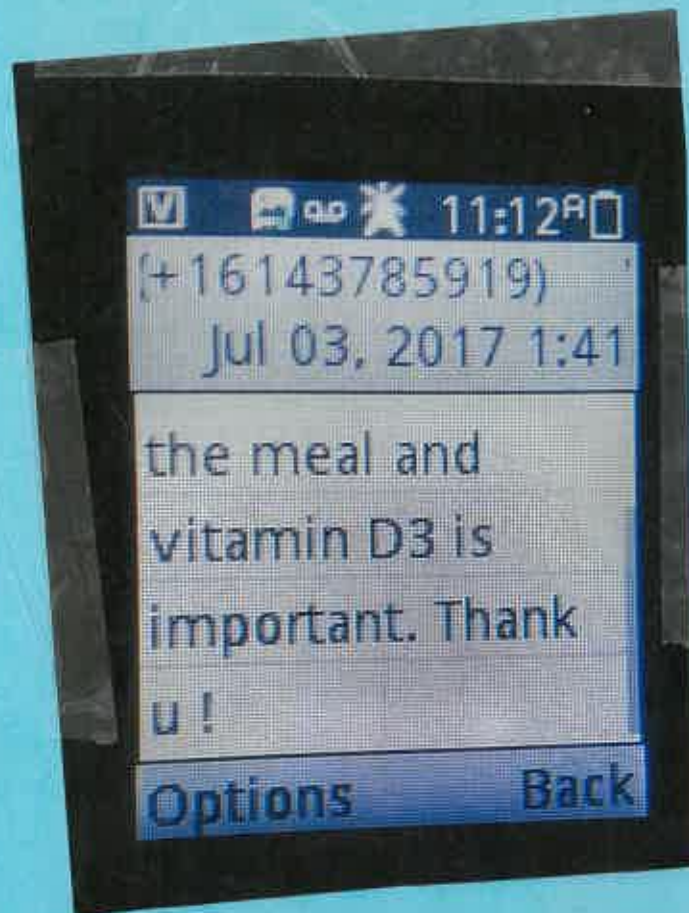


exhibit N

~~10-10~~

~~Thursday~~ Friday - May 26

I got here around 12 p.m. Gave Shis a shower.
Took pills (lunch-dose) before his shower.

Full body lotion. Emptied urine. Strong smell
~~but~~ but clear. Did laundry. Shis ate around
12:30 or 50. Had sweet snacks also. Did
extra vacuuming today. (Steps to downstairs)
with Dyson vacuum (cordless). Also regular vacuuming.

Cleaned glasses. Shis was tired & laid down
at 1:15 p.m. I massaged his feet & hands.

No shave today, or exercise. Maybe tomorrow.

Shis was walking OK today. Sprayed out the
shower & cleaned the toilet with spray & comet.

Filled up the pill dispenser of the Carbidopa.

Emptied the trash.

24/60/40

Saturday - May 27

I got here at 5 p.m. Shis was on his knees & had 'slid' on the floor. He seemed ok, though. I picked him up & he seemed to walk ok, but reluctant to stand all the way up, at first. Gave him a shower & lotion also. Put on clean clothes & shaved him. Shis seemed disoriented & had trouble comprehending things. Also tremors to mouth & hand. Took evening meds ~~at~~ before 6 p.m. gave him pravastatin ~~at~~ because I was unsure if he took it at lunch???. So because he had symptoms of not taking it, I gave it to him anyway. Room very hot when I arrived. Heat was turned on???. I vacuumed the floor & took out the trash. Seemed to want to lean ~~over~~ over ~~in~~ in the chair, so I propped him up with ~~his~~ his pillow. Jen asked me to inventory the pills & count them to see what was missing each day I work. Shis ate pizza & fruit for supper.

Sapt 16 - Saturday

Today I got here early, but got inside around 9:10 am. Took Shis to shower, he was really wet with pee. Then got him fresh clothes, itch lotion & diaper.

He took morning pills at 9:40 a.m.

Forgot to give before shower. Made up

several new foods, fresh, for him to eat, the next few days. For breakfast he

ate ~~ok~~ fried rice, scram eggs & ham & french

toast sticks. He took suppositories & tried to have a poopoo after he ate. Running behind

today. Shis laid down at 10:50 a.m. Slept

til 12:20 p.m. $1\frac{1}{2}$ hrs. Took him outside til

almost 1 p.m. He took his ~~lunch~~ lunch pills

at 12:55 p.m. Ate lunch at ~~1:15~~ 1:15 p.m.

BP 100/70 1:55 p.m.

July 10, Monday

I got here around 11 a.m. It was a busy morning. Shis was in the bed (sort of) 1/2 way in or out. I helped him to the bathroom & gave him an ^{enema}. He had a poo, ~~then~~ then he took a shower. While he was doing his business, I rearranged the furniture in the bedroom so the microwave could plug in the wall. After shower, Shis had a fresh diaper & clean clothes & lotion. Then he laid down on the bed & took a nap. I scrubbed the carpets. Also vacuumed & took out the trash. 1:30/76 BP 1:05 p.m. Shis took his lunch pills at 1 p.m. or so. No shave today, No laundry. Shis ate some rice ^{w/ meat} & cookies. Then laid down awhile. Massaged his feet. Did ~~tomorrow's~~ Exercises in the bed. Shis ate shrimp & vege at 3:40 p.m. He ate a little, but didn't like that well. So I ordered some pizza. He ate some at 4:45 p.m. Took elation early. Took the rest of his evening meds at 6:30 p.m. w cool apple juice from the frig.

exhibit 0

4 DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop N2-20-16
Baltimore, Maryland 21244-1850



Office of Strategic Operations and Regulatory Affairs/Freedom of Information Group

Refer to: Control Number 020120197021 and PIN MSDP

5/21/2019

Jackie Giebell
P.O Box 76
Whytheville, VA 24382

Dear Ms. Giebell,

This letter is in response to your Freedom of Information Act (5 U.S.C. §552) request of 2/1/2019, which you sent to the Centers for Medicare & Medicaid Services. Within your correspondence, you requested documents relating to Ohio investigations 00099902, 00099371 and 00100358.

After careful review of the documents submitted to me, a total of twenty-one (21) pages, I have determined to release them to you, as enclosed. Nineteen (19) pages are released to you in their entirety. However, I am denying you access to portions of two (2) pages pursuant to Exemption 6 (5 U.S.C. §552(b)(6)) and Exemption 7 (5 U.S.C. §552(b)(7)(C)) of the FOIA.

Exemption 6 of the FOIA permits a Federal agency to withhold information contained in personnel and medical files and similar files the disclosure of which would "constitute a clearly unwarranted invasion of personal privacy." I have weighed the public interest in disclosure (which the Supreme Court has held to be limited in this context to the public interest that would be served by shedding light in the agency's performance of its statutory duties) against the harm to the privacy of the individuals identified in these records and have concluded that the privacy interest of the subject individuals outweighs the public interest in disclosure in this particular matter.

Exemption (b)(7)(C) protects from disclosure from disclosure "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information ... could reasonably be expected to constitute an unwarranted invasion of privacy."

If you believe that the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision.

Date and Time	Source and Documentation
	<p>facility does not use restraints or alarms. LPN #235 stated that fall interventions are communicated to the staff through the computer task and care plan functions</p>
	<p>Review of Resident #5's medical record revealed the resident was admitted to the facility on 08/25/18 with diagnosis that include but are not limited to Parkinson's, dementia, cerebral infarction, hypertension, atherosclerotic heart disease, type 2 diabetes mellitus, dysarthria, weakness, and seizures.</p> <p>Resident was discharged to the facility for therapy.</p> <p>Review of admission general progress note revealed the resident was alert and oriented x3 with confusion and forgetfulness. Resident was oriented to the room and the call light. Medications were verified with the nurse practitioner and the resident's skin assessment revealed the resident had multiple small scratches and scattered bruises on the skin a skin tear on the right arm and redness on the bottom. The resident is noted to need assist with bed mobility.</p> <p>Progress notes revealed there was a care conference on 08/27/18 with the patient therapies, RN and social services. No concerns noted in the care conference note.</p> <p>The resident is noted on 08/28/18 to be alert and able to communicate needs, is a one assist with Activities of daily living mobility and transfers.</p> <p>Progress note revealed body audit on 08/29/18 per wound team interventions in place md and family notifications mad.</p> <p>Progress notes revealed on 08/31/18 the resident was found at 6:45 A.M. lying in front of his bed with blood under his head. Patient was assessed, and vital were sable the patient complained of pain in the left shoulder. Family and nurse practitioner were notified and EMT was called and the resident was transferred to the hospital.</p> <p>Review of care plan revealed the resident used a wheel chair and a walker for his mobility needs resident had care plan for fall risk that included encourage to transfer and change position slowly, have items in reach, provide assist as needed reinforce need to call for assist PT, OT as ordered. Has an alteration in skin integrity care plan to observe with adl's and off load as able.</p>
	<p>During multiple observations of the facility during the day of the facility no beds were noted to be in the high position Residents were noted to have access to the call light and staff were available to assist the resident with their needs.</p>
<p>Start Here</p>	<p>Review of Resident # 10 medical record revealed the resident was admitted to the facility on 01/13/17 with diagnosis that include but are not limited to Parkinson's disease, hypertension, hyperlipidemia, weakness and dysphagia. The resident is noted to be a do not resuscitate comfort care and was receiving hospice benefit at the time of his death on 09/05/18. Resident medications included:</p>

Date and Time	Source and Documentation
	<p style="text-align: right;">(Carbadopa)</p> <p><i>cectvgn</i></p> <p>Aspirin 81mg daily, bisco-dyl 10 mg suppository as needed. Sinemet 25-250 two tablets in the morning and 1 tablet in the evening, docusate 100mg daily. fish oil 1,000mg daily, MiraLAX 17gm daily as needed. pravastatin 20 mg daily at bedtime, Tylenol 325mg two tablets every 8 hours as needed, vitamin B-12 500 mcg daily, vitamin C 500 mg daily, vitamin D3 5,000 units daily.</p> <p>Review of the hospice assessment dated 08/05/18 revealed the resident was alert and oriented to person and place with progressive neurologic disease process, end stage Parkinson's, the resident was noted to be require assistance from care givers for all Activities of daily living, the assessment indicates the resident has increased weakness, decreased function, decreased cognitive status, decreased skin integrity, increased need for services. The resident is noted to fall asleep in the hospice nurses' presence, and to have had a recent decline, the family had reported he had on and off days. The note stated the resident has a 15-year history of Parkinson's now with functional decline and generalized weakness.</p> <p>Review of progress note from 08/22/18 revealed the resident had a fall in his room trying get up on his own it is documented the resident was close to nurses station, the staff had just been in with the resident and the resident was then found on the floor, the resident was assessed per standard, and sent to the ER for stitches. No deficient practice.</p> <p>Skin documented on 08/13/18 as discoloration from normal aging process from nurse practitioner. 08/14/18 and resident stated discolored area to wrist has been there since he was young. Only area noted. 08/15/16 no new skin areas, 08/16/18, 08/22/18, 08/29/18, no new areas noted, 08/30/18 open area to right buttock 1x1 z guard. Resident was off hospice after return from hospital and was put back on hospice on 09/02/18 was actively dying on 09/03/18 and comfort measures from staff are charted all throughout out chart resident passes away on 09/04/18 at 11:57 P.M. family was the bedside.</p> <p>Review of Minimum data set sig change dated 08/06/18 revealed the resident had a bims was not assessed, required extensive assist for all daily cares, the resident has had falls since admission, has less than 6 months life expectancy, is at risk for pressure ulcer but has no pressure ulcer, had no other skin alterations noted, is receiving hospice services.</p> <p>The resident's medicine regime was reviewed by a pharmacist on 08/16/18 and found to have no irregularities. and reviewed monthly.</p>
	<p>Review of Resident # 2's medical record revealed the resident was admitted to the facility on 05/05/17 with diagnosis that include but are not limited to abdominal pain, bipolar disorder, acute kidney failure, type 2 diabetes, hyperlipidemia, disease of thymus, constipation, irritable bowel syndrome, and unspecified open wound of abdominal wall.</p>

See exhibit 4

9 complete?

Exhibit 9

ATTENTION : OFFICER TRAVES

COUNTER COMPLAINT FOR TELEPHONE HARASSMENT CHARGE, made by kwei wu and kevin wu

Officer Traves,

I do not know for sure if Mr Wu, (shis-kin) has his phone or not. But I tried to call him YESTERDAY,(before the complaint was filed) around 12:45 pm, and did not get him. But didn't realize until late last night, that Mr. Wu had tried to call me back at 12:51 pm, yesterday. It showed up as a missed call on my phone. Also I have 2 texts, 1 from Mrs. Wu, and 1 from my boss, Jen wu, in Virginia, giving me permission to call Mr. Wu.

That is in addition to the permission from the corporate office of the rehab center, to make calls and have visits with Mr. Wu. And THE NURSING HOME REFORM ACT OF 1987, that states that patients have a right to receive calls from those that they want to talk to. The missed call from Mr. Wu, shows that he wants to talk to me. Therefore anyone trying to restrict him or myself from communicating, is violating a federal law.

The next part of this, is to document the issues of the last 3 and a half months. I have been going through this phone problem since the end of april of this year. Mr. Wu always kept his phone in his pocket, where it could be easily reached, and usually answered the phone within 1 or 2 calls. The end of april, I was told he dropped his phone in the shower, and that it wasn't working correctly. One Sunday morning, I called Mr. Wu, and he didn't answer, yet called me back. When I answered, someone hung up the phone and then Mrs. Wu called me back, and said something like don't call Mr. Wu early. This was at 9 am when I usually called and got an answer from him. At first, I thought that Mrs. Wu had the phone, but as the day wore on, I realized that Mr. Wu had called me back, and Mrs. Wu had took the phone away from him! Mrs. Wu told me that she was ordering a new phone, and that the voice wasn't working on his phone. Yet when I called, it worked ok. I found out from a 3rd party that when I called the room phone, the nurses took Mr. Wu the phone, and Mrs. Wu took it away from him. So I sent the same 3rd party into the room to answer it for Mr. Wu and hand him the phone.

After that, I would call Mr. Wu and hear Mrs. Wu yelling at him in the background. The few times that Mrs. Wu did let me talk to Mr. Wu, it was at mealtime and he didn't like to talk then, he wanted to eat. So I called at different times.

After Mrs. Wu tried to get me out of the nursing home, she agreed that I could call Mr. Wu, yet every phone number I called him with, ended up blocked. At first I thought Mr. Wu's phone was turned off, until I called his number, with a different phone, and this phone went through. Then I realized what happened. I constantly had to change my cell phone no, and use multiple phones, to be able to call Mr. Wu, which I had permission to do anyway.

More recently, I had noticed that most of the time, I have to call multiple times to get Mr. Wu. Sometimes I was able to get him at 9 am. One time a nurse helped me answer the phone at 10:15am. Another time a nurse helped me talk to him at 11am. Another time I got him around 1 pm. And even at 1:30 pm, and also 2 pm. So these were the different times I tried to call him. I also remembered that a

nurse brought Mr. Wu's evening medicine at 4:20 p.m. And another time, I got him a lot was 6 pm. The best time of the day to get Mr. Wu was around 1 pm and 6pm, but each day was different. And because I didn't know Mr Wu's schedule, it was hard to know exactly when to call. And I was calling at different times hoping to catch a nurse to help me answer his phone, also.

There were times that Mrs. Wu seemed to be controlling his phone, and Mr. Wu seemed very anxious to talk to me when I finally got him. (like at 6pm) Because of this, I couldn't even be sure that Mr. Wu had access to his phone at all. That's why I called the room phone. Because, I thought if Mr. Wu didn't have his cell-phone, maybe I could get a nurse to answer and help me. Also one time it seemed to help Mr. Wu to answer the phone. He heard the room phone ringing, then I call his cell-phone and he has time to get it and put it on his chest, so when I call his cell phone is there and he can answer it quickly.

At first the nurses were helping me, but I heard Mrs. Wu yelling at them, so they wouldn't help me anymore. Mrs Wu didn't like me calling Mr.Wu every day. So she would let me talk to Mr. Wu, then I heard her in the background trying to tell Mr. Wu to tell me stuff like not to call everyday, etc..

Mr. Wu never said stuff like that to me when Mrs. Wu wasn't there. And Mr. Wu had an afraid sound in his tone, and was stammering like he was under duress when he was making the statements.

Recently, Mr Wu has even had to 'struggle' with people to answer his phone. Last Wednesday, when he answered the phone, I heard him 'cry out' then there was a silence, and he said 'hey' as normal, but was out of breath. I heard voices in the background, so someone was trying to get his phone and Mr. Wu had to struggle to keep them from getting it. This also happened the week before, when I heard a similar disturbance.

I am NOT harassing Mr. Wu. It is quite obvious that Mr. Wu wants to talk to me.

Mrs. Wu is harassing me. I have heard her yelling at the nurses who have helped me answer the phone. She has taken the phone away from Mr. Wu when he calls me, she has blocked my phones , when I had permission to call him. And is now complaining about how many times I have to call him a day, when the reason I have to call so many times is because of problems that she created.

The law clearly states that it is illegal for someone to cause a problem for someone, then turn around and use that against them in a legal complaint. This is what the law calls ABUSE OF PROCESS.

I think this complaint should be dropped quickly, and that Mrs Wu should comply with the FEDERAL LAW as previously mentioned.

This document was signed in my presence
on 8-7-18.



Notary

Sincerely,


Jacqueline Giebell

Exhibit

~~See attached~~
officer Traves superior

Dear Sgt. Gallagher,

On Monday, Aug. 6, around 4 pm, I was contacted by officer Traves about a complaint that was made against me for telephone harassment by keui wu, and kevin wu, regarding Mr. Shis Wu who is in the Heartland of Dublin nursing home facility.

I am the former caregiver of Mr. Shis Wu, and have recently reported the abuse of 'said patient'. If you would like the details of such, you can contact Sgt. Bill Krayner, who is looking into it. And a complaint has been filed with the Ohio health, as well.

Officer Traves said he was giving me a 'warning' not to call Mr. Wu, and said if I did he would file the Telecommunications Harassment charge against me. But officer Traves said that Mr. Wu didn't even have his phone, yet said I was harassing him.

I was given contact rights with Mr. Wu by a corporate representative of the Heartland of Dublin Facility. This would include permission to visit Mr. Wu, and also up until this complaint was filed, phone calls.

Upon examining the Telecommunications Harassment Statute, I observed that no. 5 of the 'said statute', says that a person can get in trouble if they call someone and have been repeatedly told NOT to do so by someone on the 'premises'.

The word 'Premises' in this case would refer to the Nursing Home, because that's where Mr. Wu is located at. It is also where one of the 'said telephones' in the complaint, is located. (landline room phone)

I have a problem with this, because in my case, it is the EXACT OPPOSITE. I have been told REPEATEDLY by the nurses at the Heartland of Dublin facility, 'the said premises', that I COULD CALL Mr. Wu's phone, and the nursing home room phone, as well. So why is this complaint filed against me? It is WITHOUT merit, and I am not in violation of ANY of the other sections mentioned in the statute.

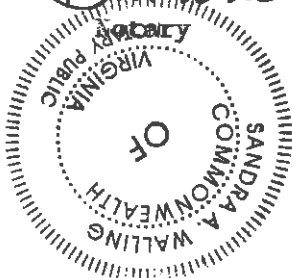
The people who made the complaint, took Mr. Wu's phone from him, and are violating a federal law over Nursing Homes (see attached) that guarantees Mr. Wu the right to have phone communications. In addition to this, they are also violating myself and Mr. Wu's 1st amendment rights to freedom of speech, because in our case, no one EVER repeatedly said not to call, at the 'said premises'.

I have been communicating on the telephone with Mr. Wu for months. And also talked to him from May 17 to July 20, everyday without missing any days.

It is my recommendation/request that this matter be immediately resolved and rescinded, and that my contact rights with Mr. Wu be completely restored.

This document was signed in my presence
on 8-10-18.

Sandra A. Walling



Page # 176206

Thank you,

Jacqueline Diebell

Jacqueline Giebell

exhibit Q

DISCOVER EFFECTIVE STRATEGIES TO
REDUCE AND MANAGE PHYSICIAN BURNOUT
TODAY WHILE PREPARING FOR THE FUTURE.

SUBSCRIBE

MY ACCOUNT

LOGOUT

 HURON

MENU

Home > Providers

March 12, 2018 01:00 AM

Justice Department declines to intervene in HCR ManorCare hospice lawsuit

TARA BANNOW



TWEET

SHARE

SHARE

EMAIL



The U.S. Justice Department has declined to intervene in four False Claims Act lawsuits against HCR ManorCare, alleging the provider admitted patients to hospice care who were not eligible for the service.

A group of former employees of HCR ManorCare's Heartland Hospice, accused the hospice of running a scheme in which it falsified patients' life expectancies so that they qualified for hospice reimbursement under Medicare Part A, and kept them on

the program after their medical conditions had stabilized rather than discharging them as required under Medicare rules. They alleged Heartland employees were fired if they did not admit a certain number of new hospice patients.

The Justice Department conducted its own investigation into the whistle-blowers' allegations before declining to intervene. The agency declined to comment on the decision.

The plaintiffs in the case can still move forward with their complaints, which were consolidated in U.S. District Court in Toledo, Ohio. The government will still receive updates on the case and could still become involved in the future, according to court documents.

Other hospice providers haven't had the same outcome. In January 2009, the Justice Department reached a **\$24.7 million False Claims Act settlement** with Birmingham, Ala.-based SouthernCare Hospice stemming from a lawsuit accusing the provider of seeking reimbursement for patients treated at its hospice facilities that did not qualify for Medicare's hospice benefit.

The Justice Department late last year [backed out of a similar case](#) it brought in 2015 against HCR ManorCare's skilled-nursing operation. The lawsuit accused the company of fraudulently overbilling Medicare for millions of dollars. That happened after a federal judge excoriated the government for its handling of the case and ruled a witness lacked credibility.

HCR ManorCare recently announced it is [filing for bankruptcy](#) and plans to shift ownership and leadership to its landlord.

*Letter
— to the —
Editor*

Send us a letter

Have an opinion about this story? Click here to submit a Letter to the Editor, and we may publish it in print.

RECOMMENDED FOR YOU



COVID-19 heroes must jump through hoops for workers' comp

403

Notes for Mon Dec 5, Wed- Dec 7

Mr. Wee had fallen when I arrived at work on Monday.

Had symptoms of stroke. Draining (R) leg & slurring. Some weakness.

Had toward a pill he had not taken or ^{there or} sat right under his

table where he sits. I'm sure it the symptoms of stroke were cause by the insect ~~pill~~ or not.

Drive was a decent amount but was almost as usual. Laid down before I left for awhile.

Wed- Dec 7

Mr. Wee was much better today. Was walking with ease & new speed. I did not hesitate to drag leg. Secured airplane the entire experience.

Noticed voice, was almost like from on Monday, but color was better.

Heads to check door & window. Give in empty line.

Fri- Dec 8

Arrived at work. Mr. Wee's legs were packed. He got into it & we were packed. He got into it & we were packed.

Mr. Wee paid the bill. Then he took the bill. Mr. Wee paid the bill. Then he took the bill.

for a while then finally took it. He was in a hurry to get to the toilet.

at 3 pm. Cleaned for tub. Washed & comforted. Cleaned Mr. Wee's. Played basketball etc.

Also other clothes. Played basketball etc. Took out empty. Pelted with empty. Took out empty. Pelted with empty.

Also other clothes. Played basketball etc. Took out empty. Pelted with empty. Took out empty. Pelted with empty.

1994

December 16, Sat night

① worked 7 hrs. New schedule.
You know a better way than
Prayer, meditation. Had a few
sessions, was good. The change
path, etc. - formerly, noticeable
but now, not so. Still, not
so happy.

December 17, Mon. 1

① continued at work.

Today.

Needed, however, conversation with
abandoned, since (today) he was
replied & enjoyed it. Said there
were 2 left. He had a shared
place on his ② shoulder. I put
baton on his ②. He did not
want me to, it was better, but

Dec. 14 - Wed

Mr. Mr. was up eating lunch.
Second string. Bath & shower &
batter. Did laundry. Change bed.
You brought us some pie for
a snack around 2 P.M. Did
let exercise, as much as usual.
Sick a sleep in bed, when I
left. Have him to massage,
Polly was already empty.
Bedpads working good.

Dec 14 - Fri

3425

Mr. Mr. had lunch & pizza
slices. Gave him a shower & shower
shower him & did the laundry.
Played basketball. Said don't
before I left. Have him to
massage & unplied Polly. Mine
was decent around 3 o'clock.
Removal took out 10 min.

Came ~~in~~ ~~the~~ ^{Empty} Mr. W's potty chair,
Mr. W's bed company, Ted's Brother. Gave
Mr. W a bath & vacuumed the floor. Did
laundry. Retreated to sores. Shaved him
& gave him a foot massage. Did not
change the bed today. Looked ok.
Helped Mr. W to the car & Jim's
brother Kevin took him out shopping.

December 19, ~~Monday~~ Monday

A came at 11:50 a.m. Mr. W
took a shower & later. Vacuumed.
Emptied potty & took out the
trash. Mr. W laid down before
I left & read to him from the
good guy book. Stopped an after
noon today.

December 20, ~~Tuesday~~ Tuesday
Came & emptied potty. Had
me, we a bath, changed bed.
Vacuumed & shaved Mr. W, W, W,
played volleyball. Messaged his
feet. Read about fruit in the
good book. Joe on left shoulder
is looking better.

December 21, ~~Wednesday~~ Sat. night was

Mr. W was halfway in for
of the bed when I arrived.
Cable looked stained. Had to
pull him up from the way he
was leaning on the bed. Cling said
he was up before, at 4:30 p.m. of 50,
Had a shower & shaved. Heister on under
of foot. Changed bed again. Mr. W
had good, Sunday. Gave him a shower
& vacuumed. Did not play basketball

Mon, Jan 2

Today I worked 11:30 to 1:30 pm.
Mr. Wu seemed weak in the leg.
(again) this time other leg as well.
(Slightly) changed toilet schedule.
Shaved him & changed his bed.
He laid down before I left.
Took a shower & played with
the babies.

Wed, Jan 4

Mr. Wu is going to leave
I go to Eric soon. I came off
noon & washed his clothes & gave
him a shower. Shaved & worked
some more on his toenails & a
little on his fingernails. Gave
him a snack of chocolate marshmallows
cake. Read in the book & gave
him foot massage also.
Shaved him & played a little
racketball. Both legs weak today.

exhibit T

Friday — May 12

Today I came at noon. His was sleeping. I let him sleep & did other chores, etc.... Then, gave him a bath & lotion & helped him get dressed. He went & ate, while I changed his bed & did laundry. Cleaned the bathtub, also. After his ate, I shaved him. Then washed his feet & put lotion on them. After that he laid down awhile. I read notes from Ken's & the rehab.

Saturday - May 13

Today I came at 5 p.m. Helped, ~~Shis~~
take a bath. (Shower) He took his evening
pills at 5:45 p.m. Put PJS & fresh shirt
& diaper on him. Massaged his feet with
lotion. He ate around 6 p.m. Had alot of
trouble walking at first. Did laundry &
put down fresh bed pad. Vacuumed the
floor. Cleaned picture frames. Cleaned Shower.

Monday - May 15

I got here at noon. Gave Shis a shower. Also clean clothes. Lotion to body & a sha foot massage at 1:15 p.m. Took his pills (lunch-time) at 1 p.m. Fed him yogurt at 1:20 p.m. Vacuumed & did laundry. Took out the trash. Yogurt needs replaced it's out of date. Shis is walking much better today. Sprayed out shower & used comet. Cleaned Shis teeth.

~~Wednesday~~ Wednesday - May 17

I came at noon. Gave Shi's a shower.

Also lotion & shave, and a foot massage.

Did laundry. Gave Shi's lunch meds

around 1:20 pm. He ate pizza ~~at~~

after he took his meds. Also put lotion

on face, after shaving. We played a little

racketball, also. Cleaned, Shower.

Shi's is walking pretty good today.

Changed the bed today! Also he ate some

Chinese food, too!

Friday - May 19

I got here at noon. Shis took a shower after sleeping in for a little bit. Changed trash & cleaned the potty chair. Took his pills around 12:30 p.m. & ate his lunch at 12:50 p.m.

I vacuumed the floor. Brought a clean Bathrobe for Shis (New & freshly washed) for after his shower. (He always says he is cold.) I shaved him & put a little lotion on his face. Filled up the pill dispenser. Shis didn't feel like exercising today.

Saturday - May 20

I got here at 5p.m. Gave Shis a shower. He had enough clean clothes, so I will wait till Monday to do the laundry. Gave him a foot massage, w lot^s & also full body to arms & also. ~~Empty~~ potty chair. Urine looked pretty clear, that's good. Shis says he already took his pills? Wiped off his potty chair. Shis laid back down after his bath. Cleaned his glasses also.

~~Monday~~ Monday - May 22

I got here at noon. Shis was standing up. Drank some warm soy milk & then took a shower. Lotion afterwards. Took lunch pills around 12:30 pm & ate right before 1 pm. Eating nice vegetarian food. Very healthy. I started laundry & changed the bed. Vacuumed & took out the trash. Shis walking OK today. Cleaned his glasses. No pee in the potty chair? Played a little racketball. Shis looked at his pictures, seemed kind of lonely. I put the one of him & ~~keep~~ up where he could see it. I shaved him also.

Wednesday - May 24

I got here around 12 p.m. Gave Shis shower & lotion. Emptied potty chair. Ur output ok & color. Clean clothes on him. Did not laundry today. Put dirty clothes in laund Bag & hung up towel. Shis took his pill around 12:20 p.m. & ate at 12:40 or so. A eating 1 piece of pizza. ~~Shis~~ Cleaned nina vacuumed & cleaned his glasses. Shis is walking much better today. (Very good) Shaved him at 1 p.m. or so. Put away & stacked ensues & water bottles on the shelf. We played racketball. Massaged his feet. (extra) Shis seemed a little hyper today. ~~★~~ Heard Shis bones creaking again. ~~★~~

~~Thursday~~ Friday — May 26

I got here around 12 p.m. Gave Shis a shower. Took pills (lunch-dose) before his shower. Full body lotion. Emptied urine. Strong smell but clear. Did laundry. Shis ate around 12:30 or so. Had sweet snacks also. Did extra vacuuming today. (Steps to downstairs) with Dyon vacuum (cordless). Also regular vacuuming. Cleaned glasses. Shis was tired & laid down at 1:15 p.m. I massaged his feet & hands. No shave today, or exercise. Maybe tomorrow. Shis was walking OK today. Sprayed out the shower & cleaned the toilet with spray & comet. Filled up the pill dispenser of the Carbidopa. Emptied the trash.

24/60/40

Saturday - May 27

I got here at 5 p.m. Shis was on his knees & had 'slid' on the floor. He seemed ok, though. I picked him up & he seemed to walk ok, but reluctant to stand all the way up, at first. Gave him a shower & lotion also. Put on clean clothes & shaved him. Shis seemed disoriented & had trouble comprehending things. Also ~~strenuous~~ tremors to mouth & hand. Took evening meds ~~at~~ before 6 p.m. gave him provastatin ~~at~~ because I was unsure if he took it at lunch???. So because he had symptoms of not taking it, I gave it to him anyway. Room very hot when I arrived. Heat was turned on???. I vacuumed the floor & took out the trash. Seemed to want to lean ~~over~~ over ~~in~~ in the chair, so I propped him up with ~~his~~ his pillow. Jen asked me to inventory the pills & count them to see what was missing each day I work. Shis ate pizza & fruit for supper.

16 / 551

Monday — May 29

I got here at 11:35 a.m. Shis was up & gave him meds around noon. He was contrary about swallowing them & also insisted on drinking ensure, also. Threw a fit about it. Was very dopey acting. When I counted the pills I found out why. He had not taken the pravastatin since I gave to him on Sat evening. He needs 1 a day. Did lots of laundry & changed the bed. I am staying over today. Gave Shis a foot massage & hand massage. Shis kept falling over when he was eating? Don't understand why? Took out the trash. Scrubbed bathtub with Comet. Vacuumed the hall & Shis room. Shis took his evening pills at 4:30 p.m., or so, afterwards. Laid back down after eating. Shis ~~was~~ ~~was~~ slept a lot today off & on. Left at 7:50 p.m.

Wednesday - May 31,

I got here a little early today. Talked to Jen about the medicine. Also fixed medicine in the new container I bought. Jen will give to him when I'm not here. Gave Shis a shower & lotion. Vacuumed the floor & took out the trash. He took lunch meds at 12:20pm. Then I shaved him & gave him a foot massage. He ate snacks after his shave. Shis seems to be walking much better today. I'm happy about that.

Friday - June 2

I got here a little early. Brought a cake with me. Gave Shis a ~~shower~~ shower & lotion.

Did laundry. Gave him his lunch pills.

He is eating a snack at 1:40 p.m. A little break in between. ★ Some symptoms of dopey

acting may be coming from getting the pills

& not eating after 20 min. ★ Took out the

trash & vacuumed. Me & Shis played ratchetball

& he ~~did~~ did good with it. I Shaved him & put lotion

on his feet. (foot massage.) Shis is walking

good today. Washed hair with a wash cloth.

Gave him lotion on his face & a little facial massage.

Saturday, June 3

I got home at 5 p.m. Shis took a shower & had full body lotion. Clean clo I vacuumed. ~~Shis~~ Gave Shis his pills at 5:30 p.m. (lunch ~~time~~) he ate crissant & strawberries at 5:50 p.m. Shis in a good mood & walking ok. Put poly I put over on his head. Cleaned & scrubbed the spot chair. Clean bedpad on the bed.

★ Shis fell over in the chair again. Had head on desk, didn't seem like he hurt himself. ★ Don't know what is causing this. Took him to pee before I left at 7 p.m. He laid down.

Monday - June 5

I got home at noon. Gave Shis a Shower & full body lotion. Clean clothes, also. Changed the bed. I vacuumed the floor. Propped up Shis with a pillow while he ate. Cleaned the potty chair. Am doing laundry today. No lunch pills yet. Not sure when Jen gave the morning pills. Will take a little later. I will be working over till 7pm today. Shared Shis & gave him foot massage. Jen came in & did some karate with ~~Shis~~ Shis. Scrubbed the bathtub. ~~finished~~ laundry. Shis laid down at 2 or so. Gave him more massage. Took lunch pills at 3:10. Ate fruit & a little yogurt at 3:30 p.m. He had other food at 4:15 p.m. Me & Shis played racquetball at 5 or so. I scrubbed some stains off the carpet. Shis found a rotten strawberry under his potty chair. ^{He} laid back down after 5 p.m. I did up the pills for the week today. Shis took his evening pills at 6:25 p.m. & ate at 6:45. Took a nap around 6 p.m. Slept soundly.

Wed, June 7

I got here around noon. She was laying down. Got him up & gave him a shower. Also full body lotion & clean clothes. No laundry today. Put fresh pads on the bed. emptied & scrubbed potty chair. Vacuumed the floor. Took out the trash. Shaved him & gave him a foot massage. Took lunch pills around 1:15 p.m. Ate a little diabetic snack after that around 1:30 p.m. Laid down at 1:45 p.m.

Friday - June 9

I got here around noon. Cleaned the bathroom up a bit. Scrubbed toilet & wiped it off. Also sink. Gave Shis a shower & clean clothes & lotion. Did laundry today. Shis played racketball. Vacuumed & took out the trash. Shaved him & gave him a foot massage. Gave him lunch pills at ~~1:30~~ 1:30 p.m. on empty stomach. Shis tried to eat, I tried to stop him & told him he had to wait a few minutes. Ate lunch at 1:45 p.m.

Saturday - June 10

got here at 5 p.m. Gave Shis a shower.
He complained of being dizzy.

Took him to shower in the wheel chair.

He could stand up some. Jen said that
he had been hallucinating again. Had

lotion & clean clothes. Emptied his potty
chair. Shis took his ~~water~~ pills at

5:30 p.m. Ate yogurt & 7 up at 5:50 p.m.

Took out the trash.

(R.I.1996) (quoting *McInnis v. Harley-Davidson Motor Co.*, 625 F.Supp. 943, 952 (D.R.I.1986)). However favorable to its defense in the federal court, Smith was a stranger to the bill of sale between the receiver and Sherwood and thus has no standing to come before a court arguing in favor of its own interpretation of the original sales contract. *Id.*

[2-4] Although our ruling with respect to the standing issue is dispositive of the appeal, we nonetheless point out that Smith's substantive arguments are without merit. "The power to grant a *nunc pro tunc* order * * * is an inherent power whereby the trial court may * * * correct or amend the record * * * where [it] contains an incorrect entry or fails to record a substantial occurrence in the proceeding." *DeCarli v. Webber*, 784 A.2d 288, 290 (R.I.2001) (per curiam) (quoting 20 Am.Jur.2d *Courts* § 29 (2000)). Accordingly, the Superior Court justice had the power to authorize the receiver to make a confirmatory assignment to clarify the court-monitored bill of sale. In reviewing this decision by a hearing justice who sat without a jury, we will not reverse the ruling unless the hearing justice misconceived or overlooked relevant evidence or was otherwise clearly wrong. *Yates v. Hill*, 761 A.2d 677, 679 (R.I.2000) (per curiam).

[5] For a justice of the Superior Court to reform a written contract, "it must appear by reason of mutual mistake that the parties' agreement fails in some material respect to reflect correctly their prior understanding." *Id.* at 680. In support of the petition, both parties to the bill of sale, the receiver and Sherwood, affirmed that to the extent the contract as written did not assign Rosen's copyrights to Sherwood, the bill of sale did not reflect their mutual understanding that those rights had been transferred. These affidavits

were sufficient evidentiary support for the order allowing the receiver to assign the rights to Sherwood *nunc pro tunc*. See *Bloom v. Hearst Entertainment, Inc.*, 33 F.3d 518, 524 (5th Cir.1994) (declaring and affirming a trial court's decision that intellectual property rights had been conveyed in an ambiguous contract, that "one would be hard pressed to imagine more compelling extrinsic evidence of the parties' intent than the unanimous assent of opposing negotiators"). Nor was the order preempted by the Copyright Act. The order did not address whether copyrights existed for purposes of federal law. It merely allowed the receiver to assign to Sherwood, *nunc pro tunc*, whatever copyrights may have belonged to Rosen.

In summary, therefore, we deny and dismiss Smith's appeal, and affirm the order of the Superior Court, to which we return the papers in this case.

Chief Justice WILLIAMS did not participate.



John JALOWY

v.

The FRIENDLY HOME, INC. et al.

No. 2001-238-Appeal.

Supreme Court of Rhode Island

March 26, 2003.

Son of nursing home resident who was barred by nursing home from visiting resident brought action against the home and its administrator, alleging that, in barring

him from the retaliated against Abuse in Health and Human Services alleging that and negligence. The judgment on the defendant's son on Son moved for the verdict on the action claim, a trial on the Superior Court, J., denied standing the defendant's judgment claim of interest distress. Residing in the Supreme Court, having filed on Abuse in Health and Human Services son was relief under the benefit at trial that his ban home amounts for filing report were not so a response to son's behavior that the utterly intolerable so as to give the infliction of emotional distress. Affirmed.

1. Health and Human Services

Abuse in Health and Human Services provided son with protection writing letter to concern that nursing duties, telephone Health and Human Services incident of alleged and sending letter to the Department

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resident who was
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him from the premises, defendants had retaliated against him in violation of the Abuse in Health Care Facilities Act and alleging that they committed intentional and negligent infliction of emotional distress. The jury found in favor of defendants on the retaliation claim, but for resident's son on his emotional distress claims. Son moved for judgment notwithstanding the verdict or for a new trial on the retaliation claim, and for an additur and a new trial on the emotional distress claims. The Superior Court, Providence County, Clifton, J., denied son's motions and, notwithstanding the jury's verdict, granted defendants judgment as a matter of law on the claim of intentional infliction of emotional distress. Resident's son appealed. The Supreme Court, Flanders, J., held that: (1) having filed one or more reports under the Abuse in Health Care Facilities Act, resident's son was thereby entitled to sue for relief under the Act and to obtain the benefit at trial of a rebuttable presumption that his banishment from the nursing home amounted to retaliation against him for filing reports, and (2) home's actions were not so extreme and atrocious a response to son's perceived intemperate behavior that they could be described as utterly intolerable in civilized community so as to give rise to claim for intentional infliction of emotional distress.

Affirmed.

1. Health \S 751

Abuse in Health Care Facilities Act provided son of nursing home resident with protection against retaliation for son's writing letter to the nursing home voicing concern that nurses were neglecting their duties, telephoning the Departments of Health and Elderly Affairs to report an incident of alleged neglect at the home, and sending letter addressing this incident to the Department of Elderly Affairs, de-

spite the fact that resident's son never filed a formal report that included all the statutorily specified information that such reports had to contain. Gen.Laws 1956, $\S\S$ 23-17.8-2, 23-17.8-5(b).

2. Health \S 751, 817

Having filed one or more reports under the Abuse in Health Care Facilities Act, however incomplete they might have been, nursing home resident's son was thereby entitled to sue for relief under the Act and to obtain the benefit at trial of a rebuttable presumption that his banishment from the nursing home amounted to retaliation against him for filing reports. Gen.Laws 1956, \S 23-17.8-5(b).

3. Health \S 827

Trial judge's instruction that nursing home had "no obligation to prove anything" and that burden was upon son of nursing home resident to prove his retaliation claim was erroneous because it failed to accord son the benefit of the statutory rebuttable presumption that son's banishment from nursing home amounted to retaliation for filing reports alleging violation of Abuse in Health Care Facilities Act. Gen.Laws 1956, \S 23-17.8-5(b).

4. Appeal and Error \S 215(1)

Although trial court's instruction was erroneous because it failed to accord son of nursing home resident benefit of statutory rebuttable presumption that his banishment from home amounted to retaliation for filing reports alleging violation of Abuse in Health Care Facilities Act, instruction, as read, became law of case since son did not object to it, and even though son belatedly attempted to argue this point in connection with his post-verdict motions, court did not err in refusing to apply presumption in deciding these motions after previously instructing jury as it did, and this was because son had

waived any right to obtain benefit of presumption when he failed to request appropriate instruction and failed to object to court's instruction. Gen.Laws 1956, § 23-17.8-5(b).

5. Health ☞817

Nursing home and its administrator rebutted statutory presumption that banishment of resident's son from nursing home was in retaliation for son's filing of reports alleging violation of Abuse in Health Care Facilities Act; one of the home's nurses testified that resident's son would insult the aides and was uncooperative with staff during his visits to the home and that, on night before home terminated his visitation privileges, resident's son had called one staff member a "pencil-pushing bitch" and then put his fist to nurse's face and said "And you, too," and home's staff had complained that, while visiting resident, son had attempted to feed another resident and was, in general, "running rampage around the facility." Gen.Laws 1956, § 23-17.8-5(b).

6. Appeal and Error ☞867(1)

New Trial ☞157

By rejecting nursing home resident's son's alternate motion for a new trial on his retaliation claim against home under Abuse in Health Care Facilities Act in a few scant, conclusory sentences, trial judge failed to independently weigh the evidence, to pass on the credibility of witnesses, and to draw reasonable inferences therefrom, as Supreme Court required, and in such circumstances, Supreme Court would apply the appellate rule and examine the record to determine whether there was any competent evidence that could support the jury's verdict for nursing home. Gen. Laws 1956, § 23-17.8-5.

7. Judgment ☞199(3.3, 3.14)

In granting nursing home's motion for judgment as a matter of law on emotional

distress claim brought by nursing home resident's son, who was barred from home, the trial justice erred by effectively treating it as a new-trial motion and concluding that son's case was "against the fair preponderance of the evidence," and judge also erred when he mischaracterized son's banishment from home as merely "limiting" son's visits.

8. Judgment ☞199(3.2, 3.3)

When ruling on a motion for judgment as a matter of law after the close of the evidence, the trial justice should consider the evidence presented at trial in the light most favorable to the nonmoving party, without weighing the evidence or evaluating the credibility of witnesses, and should draw all reasonable inferences from the evidence to support the position of the nonmoving party.

9. Damages ☞50.10

To prevail on a claim for intentional infliction of emotional distress, a plaintiff must show extreme and outrageous conduct on the part of the defendant.

10. Damages ☞208(6)

Whether conduct may reasonably be regarded as so extreme and outrageous as to permit recovery for intentional infliction of emotional distress is a matter of law to be decided by a court, and if the court answers that question in the negative, it should grant judgment as a matter of law and dismiss such a claim; however, in deciding this question of law, a court may need to rely on the jury to determine whether the party bearing the burden of proof has proven the existence of certain duty-triggering facts. Restatement (Second) of Torts, § 46.

11. Judgment ☞199(1)

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verdict and resolved certain factual issues, a court has a duty to reconcile, if possible, a jury's interrogatory responses on any reasonable theory consistent with the evidence.

12. Damages \approx 50.10

Although nursing home's nonretaliatory withdrawal of its consent for resident's son to visit with nursing home resident and home's other alleged misdeeds, including close monitoring of resident's son while he was on the premises, were no doubt stress-inducing, home's actions were not so extreme and atrocious a response to son's perceived intemperate behavior that they could be described as utterly intolerable in civilized community so as to give rise to claim for intentional infliction of emotional distress; as owner of real estate, one of the fundamental rights that home possessed was right to exclude unwanted interlopers from its premises, and home did nothing to prevent son from visiting with resident off the premises.

13. Asylums \approx 5

Health \approx 582

Residents in assisted-living homes enjoy a conditional statutory right to have visitors of their choice without restrictions so long as those visitors do not pose a health or safety risk to other residents, staff, or visitors, or a risk to property, and comply with reasonable hours and security procedures. Gen.Laws 1956, § 23-17.4-16(a)(2)(viii).

14. Judgment \approx 199(3.15)

Trial justice erred in balancing the evidence adduced by nursing home and its administrator against the evidence introduced by nursing home resident's son, who was barred by home from visiting resident, when ruling on motion by home and its administrator for judgment as a matter of law with respect to son's claim of intentional infliction of emotional distress.

15. Damages \approx 50, 51

Only two classes of persons may bring claims for negligent infliction of emotional distress: those within the "zone-of-danger" who are physically endangered by the acts of a negligent defendant, and bystanders related to a victim whom they witness being injured.

16. Damages \approx 50

Nursing home resident's son, who was barred by home from visiting resident, failed to establish claim for negligent infliction of emotional distress against home because resident's son was not physically endangered by nursing home's alleged negligence, son did not otherwise fall within the specified classes of persons who could bring claims for negligent infliction of emotional distress, and son alleged that his stress resulted from nursing home's deliberate, retaliatory acts directed against himself, rather than at a relative.

Thomas Dickinson, Providence, Bruce P. Gladstein, Avon, CT, for Plaintiff.

Thomas R. Bender, Joseph A. Rotella/James T. Murphy, Providence, for Defendant.

Present: WILLIAMS, C.J.,
FLANDERS, and GOLDBERG, JJ.

OPINION

FLANDERS, Justice.

This is a case about an unwelcome visitor to an unfriendly nursing home. At least this is how the parties perceived each other. Although the defendant nursing home dubbed itself "The Friendly Home, Inc." (home), this euphonic appellation proved to be a particularly galling misno-

mer to the plaintiff, John Jalowy (Jalowy). Indeed, the parties' dealings with each other in late 1992 and early 1993 could be characterized in many different ways, but "friendly" was not one of them. At that time, Jalowy's mother, Stacia Jalowy, was a resident of the home, an assisted-living facility for elderly residents in Woonsocket. According to Jalowy, the home unlawfully retaliated against him for complaining about its nurses—and tortiously inflicted him with emotional distress—when it barred him for six weeks in 1993 from visiting his mother there. The home, however, contended that, in doing so, it merely was protecting its residents and staff from Jalowy's increasingly rancorous visits, during which, among other hostile confrontations and recriminations, he called one nurse a "pencil-pushing bitch" and threatened another by raising his fist to her face. Ultimately, a Superior Court jury tasted this curdled milk of human kindness before spitting out a split verdict that pleased neither side.¹

In February 1993, approximately one month after he was given the boot, Jalowy filed a Superior Court lawsuit against the home and its administrator, defendant Angelo Rotella (collectively, defendants). He alleged that, in barring him from the premises, defendants had retaliated against him in violation of the Abuse in Health Care Facilities Act, G.L.1956 chapter 17.8 of title 23 (the act). Eventually, he also accused defendants of intentional and negligent infliction of emotional distress. After hearing the evidence at trial, a Superior Court jury answered the court's written interrogatories concerning these claims. The jury found in favor of

defendants on the retaliation claim, but for Jalowy on his emotional-distress claims. Although the jury awarded him no compensatory damages, it found defendants liable for \$50,001 in punitive damages on Jalowy's claim for intentional infliction of emotional distress. Thereafter, Jalowy moved for judgment notwithstanding the verdict or for a new trial on the retaliation claim, and for an additur and a new trial on the emotional-distress claims. The defendants responded by moving for judgment as a matter of law on the claim of intentional infliction of emotional distress. The trial justice denied Jalowy's motions, but, notwithstanding the jury's verdict, he granted defendants judgment as a matter of law on the claim of intentional infliction of emotional distress. Jalowy has appealed from that judgment.

Facts and Travel

Jalowy's mother, Stacia Jalowy, became a resident of the home in 1992. She lived there until her death in 1997. Jalowy had wanted her to move into his own house with him, but his brother, Joseph, who was their mother's legal guardian, decided instead to move her into the home.² During 1992, Jalowy regularly visited with his mother at the home, seeing her there several times each week. While visiting, he observed how certain members of the home's nursing staff were disporting themselves on the premises, concluding that their behavior was unprofessional and harmful to the residents. This led him to discharge a volley of verbal and written complaints concerning the home and its nurses. Initially, on May 5, 1992, he wrote a letter to the home's management, con-

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1. William Shakespeare, *Macbeth*, act. 1, sc. 5 (Lady Macbeth: "[Y]et do I fear thy nature; It is too full o' th' milk of human kindness / To catch the nearest way.").

2. Jalowy had challenged Joseph's appointment as their mother's guardian in 1991 court proceedings, and later filed objections in the probate court concerning Joseph's accounting with regard to his mother's estate.

tion claim, but for emotional-distress claims. He denied him no compensatory damages on the intentional infliction of emotional distress. Hereafter, Jalowy notwithstanding the order and a new trial on the claim of emotional distress.

Jalowy's motions, the jury's verdict, he argued as a matter of intentional infliction of emotional distress. Jalowy has appeal-

Travel

Maria Jalowy, became a defendant in 1992. She lived in the home until 1997. Jalowy had moved to his own house in 1992. Joseph, who was the guardian, decided to move her to the home.² During 1997, Jalowy visited with his mother there several times.

While visiting, he and the members of the family were disporting themselves, concluding that the home was unprofessional and unsafe. This led him to file a verbal and written complaint with the home and its management. On May 5, 1992, he wrote the management, con-

cerning Joseph's appointment as guardian in 1991 court and filed objections in the matter of Joseph's accounting of the estate.

tending that two staff nurses, Joan Thibault and Maureen Stone, were regularly "smoking and socializing" and causing "a detriment to the elderly people * * *." He also met with Rotella to discuss what he had written in the letter. After the meeting, another incident occurred in which Jalowy observed the same two nurses ignore "two very helpless people * * * [who were] begging for help." After this event, Jalowy called the State Department of Health and the Department of Elderly Affairs to report what he had witnessed at the home. On August 28, 1992, he also sent a letter detailing this episode to the attention of the Department of Elderly Affairs.

On December 31, 1992, as Jalowy was departing the home, he encountered the two nurses that he had complained about previously. He suspected that they had been following him around the premises and making fun of him. The particulars of this incident were sharply disputed at trial, but from defendants' standpoint, it climaxed when Jalowy angrily confronted the nurses, swore at one of them, then brandished his fist in the face of the other. In any event, this New Year's Eve imbroglio proved to be the final straw that broke defendants' willingness to allow Jalowy to continue visiting his mother at the home. Thus, the next day, on January 1, 1993, Rotella told Jalowy:

"You are no longer welcome [at the home]. Go out and get a court order. Do whatever you need to. You can visit your mother at your brother's house, sister's house. We can't allow you to be here. It's not a safe situation."

Approximately one month later, on February 2, 1993, Jalowy took up Rotella on his suggestion and went to Superior Court seeking injunctive relief and damages. There, he obtained the court order that Rotella indicated would be required for his

readmission to the home as a visitor. His complaint alleged that Rotella and the home violated § 23-17.8-5 by retaliating against him for reporting instances of abuse and neglect at the home. He also alleged that they violated his "Constitutional Freedom of Association." A Superior Court justice issued an order temporarily enjoining defendants from barring Jalowy from visiting with his mother at the home. With the cooperation of counsel for the parties, the court set up an agreed-upon schedule allowing Jalowy to visit his mother in the home's lobby three days a week for one hour each visit. The parties amended this schedule of visits several times, but it remained substantially the same throughout the pendency of the lawsuit, until Jalowy's mother died in 1997.

In 1995, the Superior Court entered summary judgment for defendants on Jalowy's constitutional claim. Four years later, in 1999, Jalowy moved to amend his complaint to include claims for intentional and negligent infliction of emotional distress against both defendants, which the court granted.

As previously stated, the parties eventually tried the statutory retaliation and the common-law emotional-distress claims before a jury. In response to written interrogatories, the jury found for defendants on the retaliation charge, but for Jalowy on both emotional-distress claims. The jury awarded Jalowy no compensatory damages, but it held defendants liable for punitive damages on the intentional-infliction-of-emotional-distress claim in the amounts of \$25,000 against the home and \$25,001 against Rotella.

Thereafter, Jalowy moved for judgment notwithstanding the verdict or for a new trial on the retaliation claim, and for an additur and a new trial on the emotional-distress claims. The defendants filed a

motion under Rule 50(b) of the Superior Court Rules of Civil Procedure for judgment as a matter of law on the claim of intentional infliction of emotional distress. In a written decision, the trial justice denied Jalowy's requests but granted defendants' motion. He then entered a judgment providing "[t]hat plaintiff * * * take nothing, [and] that the action be dismissed on the merits," from which Jalowy has appealed. Although the parties have argued other issues on appeal besides the ones we address below, because of our disposition of these issues it is unnecessary for us to reach these other alleged errors and arguments.

Retaliation Under the Abuse in Health Care Facilities Act

Jalowy first argues that the trial justice erred in refusing to grant him judgment notwithstanding the verdict or a new trial with respect to his claim that defendants retaliated against him for filing a report alleging a violation of the act. The trial justice denied Jalowy's motion on two grounds: (1) that Jalowy never filed a report containing sufficient information to warrant statutory protection under the act from retaliation; and (2) that, even if he did file such a report, the evidence adduced at trial was such that reasonable jurors could differ on whether Jalowy's banishment was the product of retaliation for his complaints to governmental authorities, or whether it was simply a legitimate response—however wrong-headed and heavy-handed—to what the home perceived to be Jalowy's threatening and disruptive behavior when he was on the premises as a visitor. In other words, the trial justice believed that a reasonable jury could conclude from the evidence introduced at the trial that the home had imposed the banishment sanction in question for reasons other than to retaliate for Jalowy's complaints about the nurses.

Jalowy contends that, as a person who was not required to file a report under the act, he was not obliged to provide all the information that the act requires in a report to obtain the statutory protection from retaliation. Further, he argues, he was entitled to a rebuttable presumption that defendants' actions were retaliatory, and that defendants failed to rebut that presumption.

[1] We agree with Jalowy that the trial justice erred in finding that the act did not entitle him to assert a claim for retaliation merely because his complaints did not meet all the statutory requirements that a report to the Department of Health must contain, as outlined in § 23-17.8-2. Section 23-17.8-5(b) of the act provides protection against retaliation even to those who were merely "about to make a report." In this case, Jalowy introduced enough evidence that a jury could have found that he was, at a minimum, about to make a report. He testified that he wrote a letter to the home voicing concern that the nurses were neglecting their duties, telephoned the Departments of Health and Elderly Affairs to report an incident of alleged neglect at the home, and even sent a letter addressing this incident to the Department of Elderly Affairs. Thus, the act provided him with protection against retaliation for these acts, despite the fact that he never filed a formal report that included all the statutorily specified information that such reports must contain.

[2-4] We also agree with Jalowy's contention that, having filed one or more reports under the statute—however incomplete they may have been—he was thereby entitled to sue for relief under the statute and to obtain the benefit at trial of a rebuttable presumption that his banishment from the home amounted to retaliation. See § 23-17.8-5(b) ("Where a facility

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discharges, demotes, or retaliates by any other means against a person after he or she has made a report, testified, or was subpoenaed to testify as a result of a report required by this chapter, there shall be a rebuttable presumption that the facility discharged, demoted, or retaliated against that person as a result of his or her report or testimony." But when Jalowy failed to request such an instruction, the trial justice instructed the jury that defendants had "no obligation to prove anything" and that the "burden is upon Mr. Jalowy to prove his claim to you." Although this instruction was erroneous with respect to Jalowy's retaliation claim because it failed to accord Jalowy the benefit of the statutory presumption, Jalowy did not object to it. As a result, the instruction as read became the law of the case. See, e.g., *Habib v. Empire Productions, Inc.*, 739 A.2d 662, 665 (R.I. 1999)(per curiam). And even though Jalowy belatedly attempted to argue this point in connection with his post-verdict motions, the trial justice did not err in refusing to apply the presumption in deciding these motions after previously instructing the jury as he did. This is so because Jalowy had waived any right to obtain the benefit of this presumption when he failed to request an appropriate jury instruction on this point and when he failed to object to the court's jury instructions that did not accord him the benefit of the statutory presumption. *Id.* Thus, according to the court's unobjected-to but erroneous instructions, Jalowy bore the burden of proving defendants' retaliatory motive in barring him from the home without the benefit of the statutory presumption.

[5] But even if Jalowy had requested an appropriate jury instruction on the statutory presumption and had objected on a timely basis to the court's proposed instructions that failed to instruct the jury

accordingly—and even if the court thereafter had instructed the jury about the statutory presumption of retaliation—such a presumption would have been rebuttable by defendants. See § 23-17.8-5(b). And here, most tellingly, defendants introduced sufficient evidence for the jury to find that, presumption or no, defendants' actions toward Jalowy were not in fact taken in retaliation for his complaints about the nurses. For instance, Maureen Stone, one of the home's nurses, testified that Jalowy "would insult the aides," and was uncooperative with the staff during his visits to the home. Stone further testified that, on the night before defendants terminated his visitation privileges, Jalowy had called one nurse a "pencil-pushing bitch" and then put his fist to Stone's face and said "And you, too." Rotella testified that he had received complaints from the staff that, while visiting his mother, Jalowy had attempted to feed another resident and was, in general, "running rampage around the facility." Thus, "[b]ased upon the information that was given to [him] by [his] staff," Rotella "felt [plaintiff] was a threat to the safety and welfare of the patients and employees." The jury could have relied upon such evidence in concluding that defendants' decision to exclude Jalowy from the home was not triggered by a retaliatory motive keyed to his complaints about the home's supposedly lazy and heartless nurses, but rather by defendants' legitimate concern for the safety and security of the home's staff and residents—irrespective of whether Jalowy had complained to various authorities about some of the nurses' conduct.

Furthermore, as the trial justice correctly noted, this evidence was such that reasonable minds could differ on whether the home's action in barring Jalowy from the premises was in retaliation for Jalowy's reporting activity or was merely a legitimate administrative response designed to

protect the staff and residents from the threatening acts of a perceived troublemaker. *Skaling v. Aetna Insurance Co.*, 742 A.2d 282, 288 (R.I.1999). Thus, despite the court's failure to instruct the jury about the statutory presumption, we affirm the trial justice's decision not to grant Jalowy's motion for judgment notwithstanding the verdict on the retaliation claim. *Id.*

[6] With regard to the trial justice's decision denying Jalowy's alternate motion for a new trial, we conclude that by rejecting it cursorily in a few scant, conclusory sentences, he failed to independently weigh the evidence, to pass on the credibility of witnesses, and to draw reasonable inferences therefrom, as we require. See, e.g., *Long v. Atlantic PBS, Inc.*, 681 A.2d 249, 254 (R.I.1996). In such circumstances, we apply the appellate rule and examine the record to determine whether there is any competent evidence that could support the jury's verdict. *Hefner v. Distel*, 813 A.2d 66, 70 (R.I.2003). As described above, defendants introduced sufficient evidence to support the jury's conclusion that the home's actions vis-à-vis Jalowy were not retaliatory, and thus we affirm the court's denial of Jalowy's new-trial motion on the retaliation claim.

Intentional and Negligent Infliction of Emotional Distress

[7] In deciding that defendants were entitled to judgment notwithstanding the verdict with respect to Jalowy's claims for intentional infliction of emotional distress, the trial justice ruled that:

"In reviewing the evidence in the light most favorable to [plaintiff] and in providing him with the benefit of all reasonable and legitimate inferences, this Court determines that the jury's finding * * * fails to respond truly to the merits of the controversy and is against the

fair preponderance of the evidence. This Court finds that based upon the evidence offered by both sides at trial, the conduct of defendants was not 'so outrageous in character and so extreme in degree' to warrant a finding for intentional infliction of emotional distress. Here, defendants' practice of monitoring and limiting Jalowy's visits may have been inconvenient and offensive to him, [but] it is 'a far stretch * * * to characterize it as so extreme and outrageous as to be atrocious and utterly intolerable in a civilized community.' *Swerdlick v. Koch*, 721 A.2d 849, 863 (R.I.1998)." (Emphases added.)

In granting defendants' motion for judgment as a matter of law, the trial justice erred by effectively treating it as a new-trial motion and concluding that Jalowy's case was "against the fair preponderance of the evidence." He also erred when he characterized defendants' banishment of Jalowy from the premises as merely "defendants' practice of * * * limiting Jalowy's visits." The banishment here amounted to much more than just "limiting Jalowy's visits."

[8] When ruling on a motion for judgment as a matter of law after the close of the evidence, the trial justice "should consider the evidence presented at trial in the light most favorable to the nonmoving party, without weighing the evidence or evaluating the credibility of witnesses, and should draw all reasonable inferences from the evidence to support the position of the nonmoving party." *Swerdlick v. Koch*, 721 A.2d 849, 856 (R.I.1998). (Emphasis added.) On review, this Court applies the same standard. *Id.* Although we hold that the trial justice erred when he balanced the evidence as he did and mischaracterized Jalowy's banishment as merely "limiting Jalowy's visits," we ultimately agree with his conclusion to grant defendants'

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motion upon applying the standard he should have employed.

[9] To prevail on a claim for intentional infliction of emotional distress, a plaintiff must show "extreme and outrageous conduct on the part of the defendant." *Di-Battista v. State*, 808 A.2d 1081, 1088 (R.I. 2002). In deciding whether the evidence introduced at trial can support a jury finding of extreme and outrageous conduct, this Court has adopted the very high standard set forth in the Restatement (Second) *Torts* § 46 (1965) with regard to what evidence is required to satisfy this element of the claim:

"It has not been enough that the defendant has acted with an intent which is tortious or even criminal, or that he has intended to inflict emotional distress, or even that his conduct has been characterized by 'malice,' or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort. *Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.* Generally, the case is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!'" *Swerdlick*, 721 A.2d at 863 (quoting Restatement (Second) *Torts*, § 46 cmt. d at 73).

[10,11] Whether conduct "may reasonably be regarded as so extreme and outrageous as to permit recovery" for intentional infliction of emotional distress is a matter of law to be decided by a court, and if the court answers that question in the negative, it should grant judgment as a matter of law and dismiss such a claim. See Restatement (Second) *Torts*, § 46

cmt. h. In deciding this question of law, however, a court may need to rely on the jury to determine whether the party bearing the burden of proof has proven the existence of certain duty-triggering facts. See *Kuzniar v. Keach*, 709 A.2d 1050, 1055-56 (R.I.1998). Thus, in this case, a finding by the jury that defendants had retaliated against Jalowy for complaining to the regulatory authorities about the nurses at the home may well have sufficed to warrant the jury's returning a verdict for Jalowy on the intentional-in-fliction claim. Further, when considering a judgment as a matter of law after a jury has returned a verdict and resolved certain factual issues, a court has a duty to reconcile, if possible, a jury's interrogatory responses on any reasonable theory consistent with the evidence. *Pierce v. Southern Pacific Transportation Co.*, 823 F.2d 1366, 1370 (9th Cir.1987). In this instance, because the jury concluded that the home did not retaliate against Jalowy for complaining about the nurses, the trial justice's job in passing on the various post-verdict motions was to determine whether the evidence entitled the jury to find that defendants' actions were nonretaliatory under the act and, if so, whether such actions nonetheless were so extreme and outrageous as to permit a verdict in favor of Jalowy to stand on the intentional-in-fliction claim.

The most compelling evidence Jalowy introduced to satisfy the outrageous-conduct element of his intentional-in-fliction claim was Rotella's decision on January 1, 1993, to bar Jalowy from visiting with his mother at the home. As Jalowy testified at trial, when he met with Rotella on January 1, he did not even let Jalowy finish explaining what had happened during his most unpleasant New Year's Eve encounter with the home's nurses when Rotella peremptorily informed him of his immedi-

ate ouster from the home. Thus, Rotella told him, "As of 3:20 today you are officially barred from this facility and the grounds." After this decree of banishment, Jalowy did not see his mother again at the home for approximately six weeks. He was allowed back into the home only when he obtained a temporary restraining order from the Superior Court after he filed this lawsuit. The order, effective February 4, 1993, established a visitation schedule allowing Jalowy to meet with his mother one hour a night for three nights a week in the home's lobby.

The key question for this Court on appeal is whether defendants' nonretaliatory banishment of Jalowy from the home—thereby preventing him from visiting there with his mother for an approximate six-week period in 1993—together with defendants' antecedent and subsequent monitoring conduct, including allegedly ordering the nursing staff to closely follow Jalowy when he was on the premises—were acts that, as a matter of law, a jury could find "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Swerdlick*, 721 A.2d at 863 (quoting Restatement (Second) Torts § 46 cmt. d at 73). In *DiBattista*, we acknowledged that the defendants' "swift action"—pursuant to which the Department of Children, Youth and Families revoked the plaintiffs' license to serve as foster-care parents one day after the agency informed the parents it was considering such a decision, and then summarily removed the children involved from their custody—was conduct that "doubtlessly caused * * * emotional distress." *DiBattista*, 808 A.2d at 1088. Nonetheless, we held that the plaintiffs' claim failed as a matter of law because they did not allege any facts indicating extreme and outra-

geous conduct under the circumstances presented by that case. *Id.*

[12] Likewise, under the circumstances of this case, defendants' withdrawal of their consent for Jalowy to visit with his mother at the nursing home and their other alleged misdeeds—including close monitoring of him while he was on the premises—were no doubt stress-inducing. Perhaps, when viewed most favorably to Jalowy, they even could be characterized as a most unnecessary and heavy-handed overreaction on defendants' part to Jalowy's sometimes fractious forays into the alien world of this nursing-home's administration. Yet, whether viewed in isolation or in the aggregate, defendants' nonretaliatory actions were not so extreme and atrocious a response to Jalowy's perceived intemperate behavior that a reasonable jury could find them to be "*utterly intolerable in a civilized community.*" *Swerdlick*, 721 A.2d at 863.

Significantly, Jalowy did not allege or prove that the home breached any contractual commitment by the actions it took against him. And despite the fact that the nursing-home business is heavily regulated by state and federal authorities, Jalowy did not direct the home, the Superior Court, or this Court to any statute or regulation that prevented defendants from excluding him from the home. Nor has he pointed us to any other official policy that outlaws such no-visitation orders in these circumstances. Indeed, nursing homes and assisted-living facilities may have legitimate reasons for restricting or preventing would-be visitors from obtaining unfettered access to residents. This is especially true under circumstances in which the home perceives that the visitor has been abusive to its staff, and continued visits might cause the environment at the home to deteriorate into one that was

more disruptive to residents and the staff.

[13] Legislatures in other states, as Congress, have how best to balance concerns of nursing home operators in protecting members' health with the best interests of residents in imposing reasonable restrictions on their ties. Thus, both parties have passed on how to define a resident's right to certain visitation facilities that a state regulation § 483.10(j)(1) (2002); Wash. Rev. Code (1994). And even in the balance of the right of the residents to access to visitation at a nursing home, none of the forceable rights to restricted access to residents of nursing homes in Rhode Island, nursing homes enjoy a right to "[h]ave visitation restrictions so long as they pose a health or safety risk to residents, staff, or the community, and comply with security procedures." 16(a)(2)(viii).

Federal regulations for nursing facilities that require an even balance between visitation and security. § 483.10(j)(1)(vi) has the right to immediate access

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[13] Legislatures in Rhode Island and other states, as well as the United States Congress, have addressed the question of how best to balance the legitimate concerns of nursing-home owners and operators in protecting their residents' and staff members' health and safety with the interest of residents and their visitors in obtaining reasonable if not unrestricted access to each other on the premises of these facilities. Thus, both state and federal authorities have passed laws and regulations that define a resident's rights to obtain access to certain visitors on the premises of those facilities that are subject to federal and state regulation. See, e.g., 42 C.F.R. § 483.10(j)(1) (2003); G.L.1956 § 23-17.4-16; Ohio Rev.Code Ann. § 3721.13(A)(21) (2002); Wash. Rev.Code § 70.129.09(1)(f) (1994). And even though these laws differ in the balances they strike between the right of the residents to have unrestricted access to visitors and the right of the nursing home to restrict or prevent such access, none of them expressly confer enforceable rights on visitors to obtain unrestricted access to relatives or to other residents of such facilities. Thus, in Rhode Island, residents in assisted-living homes enjoy a conditional statutory right to "[h]ave visitors of their choice without restrictions so long as those visitors do not pose a health or safety risk to other residents, staff, or visitors, or a risk to property, and comply with reasonable hours and security procedures." Section 23-17.4-16(a)(2)(viii).

Federal regulations grant residents in facilities that are subject to these strictures an even broader right to have relatives visit with them. Thus, 42 C.F.R. § 483.10(j)(1)(vii), provides that a "resident has the right and the facility must provide immediate access to any resident by * * *

immediate family or other relatives"—subject "to the resident's right to deny or withdraw consent at any time." A resident's right to have access to unrelated visitors is further "[s]ubject to reasonable restrictions." 42 C.F.R. § 483.10(j)(1)(viii).

But none of these laws, rules, and regulations expressly confer rights of access upon visitors—only upon the residents themselves. Much less do they expressly endow visitors with the right to maintain a civil lawsuit for damages or for equitable relief if they can establish one or more violations of these provisions.

Viewed in the light most favorable to Jalowy, but taking into account the jury's finding that defendants' actions were not retaliatory, defendants' decision to institute a total ban on his visits with his mother at the home was a drastic over-reaction to his attempts to identify and remediate what he perceived to be lackadaisical and uncaring practices on the part of certain members of the home's nursing staff. Arguably, such a ban even may have been illegal vis-à-vis Jalowy's mother (if she or her legal guardian had complained about it to the appropriate authorities, which, apparently, they did not). Nevertheless, we cannot say that, under the circumstances, defendants' nonretaliatory decision to banish Jalowy from the home could be described as conduct that was "*beyond all possible bounds of decency, [so as] to be regarded as atrocious, and utterly intolerable in a civilized community.*" *Swerdlick*, 721 A.2d at 863 (quoting Restatement (Second) Torts, § 46 cmt. d, at 73).

We have held that a party may not be liable for intentional infliction of emotional distress "when [a defendant] has done no more than insist on [its] legal rights in a permissible way, even though such insistence is likely or even certain to annoy, disturb, or inconvenience [plaintiff] or even

cause [plaintiff] to suffer some emotional distress." *Swerdlick*, 721 A.2d at 863 (quoting *Champlin v. Washington Trust Co. of Westerly*, 478 A.2d 985, 989 (R.I. 1984)). Thus, absent a contractual provision or some law, rule, or regulation preventing the home from banning visitors such as Jalowy from obtaining access to the home for visits with relatives who are residents there—and providing such visitors with standing to raise such claims—we are not persuaded that the home acted outrageously, atrociously, and beyond all possible bounds of decency when it barred Jalowy from entering onto its premises. After all, as an owner of real estate, one of the fundamental rights that the home possessed was the right to exclude unwanted interlopers from its premises. *Nollan v. California Coastal Commission*, 483 U.S. 825, 831, 107 S.Ct. 3141, 8145, 97 L.Ed.2d 677, 686 (1987). Moreover, the home did nothing to prevent Jalowy from visiting with his mother off the premises, much less did it try to prevent or dissuade her from leaving the home to meet with Jalowy or from relocating to another facility if she had wished to do so. And certainly defendants' later actions in defending against Jalowy's suit for injunctive relief and damages—which even Jalowy did not allege exceeded their legal rights—did not constitute the type of behavior capable of giving rise to a claim for intentional infliction of emotional distress.

[14] In summary, then, although the trial justice erred in balancing the evidence adduced by defendants against the evidence introduced by Jalowy in ruling on defendants' motion for judgment as a matter of law, we agree with his ultimate conclusion that defendants in this case were entitled to judgment as a matter of law with respect to plaintiff's claim of intentional infliction of emotional distress.

[15, 16] Finally, Jalowy argues that the trial justice erred in denying his motion for an additur or a new trial on his claim for negligent infliction of emotional distress. We reject this argument because defendants were entitled to judgment as a matter of law on the negligent-infliction claim. Only two classes of persons may bring claims for negligent infliction of emotional distress: those within the "zone-of-danger" who are physically endangered by the acts of a negligent defendant, and bystanders related to a victim whom they witness being injured. *Marchetti v. Parsons*, 638 A.2d 1047, 1049, 1051 (R.I.1994). Here, the tortious behavior Jalowy cited in his complaint and at trial involved alleged misconduct directed at him: namely, defendants' decision to monitor him when he was on the premises and, ultimately, to bar him from visiting his mother at the home. Because Jalowy was not physically endangered by defendants' alleged negligence; because he did not otherwise fall within either of the above-specified classes of persons who can bring claims for negligent-infliction of emotional distress; and because he alleged that his stress in this case resulted from defendants' deliberate, retaliatory acts directed against him rather than at a relative, he failed to adduce evidence supporting a claim for negligent infliction of emotional distress. *Liu v. Striuli*, 36 F.Supp.2d 452, 480 (D.R.I. 1999); *Iacampo v. Hasbro, Inc.*, 929 F.Supp. 562, 581 (D.R.I.1996).

Because we hold that the defendants were entitled to judgment as a matter of law on both emotional-distress claims, we need not address plaintiff's arguments (1) that he was entitled to an additur or a new trial on his emotional-distress claims; (2) that the trial justice erred in refusing to let him testify about his alleged economic damages; and (3) that the trial justice erred when he allowed his attorney only forty minutes for closing arguments, even

though the applicable minutes for such arguments should consider the defense because Jalowy failed to provide appropriate physical-symptom evidence to establish that his emotional distress failed to prove the case. See, e.g., *Vallinoto*, 830, 838-40 (R.I. 1994) (physical symptom required).

Con

For these reasons, we affirm the judgment of the Court to which we are assigned in this case.



Theodore E

Melinda Blau

No. 2001

Supreme Court

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Purchaser broker and real estate agent's failure to disclose problem constitute breach of implied fair dealing, breach of implied duty by purchaser to investigate trade practices. Superior Court, *Berg, J.*, granted judgment in favor of defendant.

though the applicable rule allowed sixty minutes for such arguments. Nor need we consider the defendants' contention that because Jalowy failed to introduce appropriate physical-symptoms evidence to buttress his emotional-distress claims, he failed to prove them as required by law. See, e.g., *Vallinoto v. DiSandro*, 688 A.2d 830, 838-40 (R.I.1997) (describing the physical symptom requirement).

Conclusion

For these reasons, we deny the appeal and affirm the judgment of the Superior Court to which we return the papers in this case.



Theodore E. STEBBINS, Jr.

v.

Melinda Blauvelt WELLS, et al.

No. 2001-620-Appeal.

Supreme Court of Rhode Island.

March 27, 2003.

Purchaser brought action against vendor and real estate agents, alleging that failure to disclose severe water erosion problem constituted a violation of Real Estate Sales Disclosure Act, fraud, negligent omission, negligence, breach of contract, breach of implied duty of good faith and fair dealing, breach of warranty by vendor only, racketeering and breach of fiduciary duty by purchaser's agent only, and deceptive trade practices by all agents. The Superior Court, Newport County, Thunberg, J., granted summary judgment in favor of defendants, and purchaser appeal-

ed. The Supreme Court, 766 A.2d 369, vacated and remanded. On remand, the Superior Court, Pfeiffer, J., granted agents' motions for summary judgment. Purchaser appealed. The Supreme Court held that: (1) no right existed to file a private suit for civil damages under the Act; (2) agents had duty to disclose material defects; and (3) alleged breach of that duty could be basis for negligence and negligent omission claims, and, in the case of purchaser's own agent, a breach of fiduciary duty claim.

Affirmed in part, vacated in part, and remanded.

1. Appeal and Error \S 893(1) Statutes \S 184

Questions of statutory construction are reviewed de novo by appellate court, and its ultimate goal is to give effect to the purpose of the act as intended by the Legislature.

2. Statutes \S 188, 189

If the language of a statute is clear and unambiguous, court must interpret it literally, giving the words of the statute their plain and ordinary meanings.

3. Statutes \S 184, 188, 206

If a statute is unclear or ambiguous, court will examine statutes in their entirety, and glean the intent and purpose of the Legislature from a consideration of the entire statute, keeping in mind the nature, object, language and arrangement of the provisions to be construed.

4. Constitutional Law \S 70.1(11)

The function of prescribing remedies for statutory rights is a legislative responsibility and not a judicial task.

windows

Driveway

Parking
lot



front
Door

steps

outside
Mat

House



mr w's
windows

Via
camera

Drop
off

Gravel
driveway

Gravel

yard

ground down there

→ I'm here
- swinging up
try to see in.

Monday - June 12

I got here at 11:55 a.m. A little early. Gave Shis a shower & lotion & clean clothes. Changed the bed & put a clean pad on it. Doing laundry today. Vacuumed & changed the trash. Shaved. Shis & put lotion on his face. He is sleeping in the chair, will massage his feet. Let him take a nap in the ~~new~~ bed. Shis took his lunch pills at 2:45 p.m. Ate lunch from the restaurant at 3 p.m. I did the pills for the week. ~~A~~ One Bottle of pills had the wrong pills in the top & cotton between them & the right pills in the bottom ~~we~~ we've Brought a Brand New Black Fan for Shis room. It's too hot in here! Shis has been relaxed & happy this afternoon, he is enjoying having the fan. Also sleeping better with it. Shis had his evening pills at 5:55. He ate some yogurt at 6:15 p.m.

Tuesday June 13

Well, I got here at 11:55am again.
Gave Shis a shower & clean clothes &
lotion. Put away most of the soda can
into the frig. Took Shis BP was 96/
Brought a new BP cuff to use. Also
him cran-grape juice, without any su
Took out the trash & vacuumed the
Shis took his lunch pills at 1:30 p.m.
Shis ate a snack at 1:40 p.m. Leaving
today at 2 p.m. Did stomach
exercises.

Wednesday - June 14

I got here at noon. Shis had a shower, bathed & clean clothes. I vacuumed. Shis took his lunch pills at 12:40 p.m. Ate around 1 p.m. Took out the trash. Shaved him while he was waiting to eat. He had a little trouble walking today. But is ok. Leaving today at 2 p.m. Took him for exercise outside & he walked around, did pretty good.

Thursday — June 15

I got here around noon. Shis was u
eating. Gave him shower & vacuumed the
took out trash. Doing laundry today
★ Shis has a carpet burn on his leg
his knee ★ Also a smaller one on his
chest. Put betadine liquid & poly
oament on it. ~~let~~ it dry in the air
with the fan. Cleaned the carpet near Shis
bed while he took a nap. Brought him
apple juice to drink. Shis had his lunch
pills at 1:35 p.m. Also drank some juice
No Shave today. He is walking ok but
has pain in leg from his burn. Shis
had a snack ~~at 2 p.m.~~ after 2 p.m. Put
him back to bed.

Friday - June, 16

4/21

I got here a little early today. ~~Shi~~ ^{Right} had another mishap with falling forward. ^{Before} ~~I~~ ^{Came}
Cut a place on his head again. Cleaned up
the mess & washed off his head & put Betadine
& ^{Polys} ointment on it. Gave him tng enema today.
Then he had a poo & then took a shower.
Got him ~~out~~ ^{out} & dry bathrobe on him, put on
diapers & clean clothes. ^{carpet} Treated burns with
Betadine & ointment & put lotion on him.
He ate crackers & soda for a snack. I
took out the trash. No laundry today.
(Did yesterday) Vacuumed Shrs room & glass
on the floor & other hallway. 120/80 BP
at 1:25 p.m. He took lunch pills around
1:45 p.m.

Sat - June 17,

I got here around noon. Shis had fallen down again on the desk. I treated skin near his eye with betadine & poly oint (yesterday's Boo Boo). Then let him walk to the shower. He's tired & not walking too good. I may stay over. Lotion & clean clothes. Treated carpet burns on legs & stomach also. Shis laid down & slept after this. Cleaned refrigerator some & put away some cans. No vacuum or laundry today. Dr ~~is~~ emptied. Gave Shis a foot massage. Shis took a nap & then got up & was walking better (trying to dance with his walker) (almost) took lunch pills at 1:35.

Shaved him & ~~he~~ took his bp. 110/78. around 2 p.m. He ate a snack after that. Also inoogeno gain. Put Shis back to bed at 3 or so. Moved potty chair over to bed to make it easier on him.

Sunday - June 18

Fathers day

72 4/21
110
17

I got here early about 10:45 or so. Shis was still in bed. Went to eat his food & then took a shower. Got upset cause he lost his wallet. Found it under the bed. Put Petadine on burns & open sores also poly ointment. Lotion & clean clothes on him. Doing laundry today. Vacuumed after Shis laid down to take a nap. Took out the trash. Shis took a little nap & then got up & took his pills around 1 p.m. Also speed. Very hot today. 124/66/100 1:15 p.m. Shis had a snack of potato salad at 1:20 p.m. & crackers, eating also some of his breakfast. Changed the bed.

Monday - June 19,

I got here at 11:45 a.m. A little early.
Mr Wn (Shis) had his head down in
the River. Was asleep again. He went to
the toilet, but had no success with the
poo poo deal. Gave him a shower. Treated
his sores with betadine & poly ointment. Lotion
to his body. Clean clothes. I vacuumed ~~the~~
the floor. Took out the trash. Took BP was
108/62 in a reclined position. Am doing
medicine today & refilling it. Took lunch pills
at 1:40 p.m. He is eating potato salad,
and crackers. No laundry today. No Shave.
Gave Shis an ^{enema} ~~enema~~ he is trying to poo.
Did a little walking before I left.

Tuesday - June 20

637-4121

7110

9317

I got here at 11:50 a.m. Shis was in a bad mood. Threw the pictures out.

Frame, & all to the other side of the room. (I put it there). Don't know why he was upset.

Gave him a shower, lotion & ointment to sores. Clean clothes & a shave today. He took his pills at 12:50 p.m. Is eating a little lunch. May take him out to the barber shop to get a hair cut. 120/70 BP at 1:40 p.m. Shis decided not to go to the beauty shop. Got good exercise though.

Wednesday - June 21

I got here at 11:45 a.m. Shis was total out of it & reclined back in the chair. Bot then forward. He went to take his shower. I washed his hair twice. Gave him lotion & clean clothes. Outwets to sores. Vacuumed & took out the trash. Shis had a snack of cinnamon twist I brought him. Then went to lay down & nap awhile. I cleared the tub. Emptied potty earlier. No laundry today. No Shave. Also cleaned bathroom toilet. lunch pills at 1:35 p.m. Shis did a 1/2 walking & had good exercise. Took BP. It was 120/60. He yogurt around 2 p.m. I fed him.

Thursday - June 22

I got here around 12pm. Shis was lying in bed. Emptied potty & scrubbed. Took Shis to the shower & clean clothes. Treated sores with ointments. Vacuumed & took out the trash. Lotion to his body. Am doing laundry today. Shaved him & did a little facial massage. Took BP it was 100/60. Gave him lunch pills at 1:45 pm. But he ate at 1pm.

Friday — June 23

I got here at noon. Shis is ⁱⁿ bed. Finished
poker & game, ~~to~~ ^{Shis} a shower. Treated Sone
with betadine & ointment. Vacuumed & emptied
the ~~trash~~ trash. Shis laid down & took a
nap. No shave or laundry today. Shis
took ~~his~~ ^{lunch} pills at 1:30 p.m. BP was
high today. 160/90 at 1:30 p.m. (Sitting
in the chair) Shis is eating his lunch
now. I left after 2.

Saturday - June 24

I got here around noon. Shis was in bed. Empty potty & scrubbed it out. Vacuum. Took Shis to the shower. Lotion & clean clothes afterward. Treated sores with betadine. Also poly ointment. Shis took his lunch pills at 12:40 p.m. I shaved him while he waited to eat. Eating at 1 p.m. now. Took out the trash. Clean pad to the bed. Sip cup straw is soaking in the big cup in the bathroom (got it out). Shis laid back down after he ate. Took BP it was 110/66, around 1:45 p.m.

Sunday - June 25

I got here about 11:45 a.m. Shis was eating. I vacuumed & emptied the potty. Am doing laundry today. Gave Shis a shower & lotion & ointment to Sores. Lotion to body & clean clothes & diaper. Changed the bed today. Washed dishes. Refilled the medication tray. Massaged his feet. He took his lunch pills at 1:30 p.m. BP 130/86. Shis is walking pretty good, now. Shis is eating a snack at 2 p.m. Stayed a little over today, cause Shis was eating.

Monday — June 26 —

I got here at 11:50 a.m. Shis had fallen on the floor again. I helped him up & he ate some crackers, a little soup & watermelon.

Then he took a shower. Applied ointments to his sores & lotion to his body. Clean clothes. Vacuumed the floor & took out the trash.

Gave Shis a foot massage. ^{Shis} Took his

^{lunch} pills at 1:25 p.m. Gave him a shave after that. Also lotion massage to face. Shis

ate a snack of cookies at 1:45 p.m. And had shrimp foo yung at 3 or so. Took some naps after that. Also called Keni.

Took his evening pills at 5:30 p.m.

Took Shis BP at 5:35 p.m. Was complaining of a headache. BP was 140/90. Was

a little thumper. Ate a snack of kiwi at

5:50 ~~after~~ pills. Shis did a little walking exercise.

Tuesday - June 27 -

Well, I got here at 10:30 a.m. Shi was standing up & I took him to the sho Got him clean & fresh lotion & clean cloth Also ointments to his sores. Hurried a load of stuff for the motel. Emptied the pot chair, though. Jen helped me take him a little outside. I took him the rest of the way. So we finally got settled here at the motel by say noon. Shi took some naps & got up & took his pills at 2 p.m. when Ton brought his food. Ate at 2:20 p.m. fried fish & stewed green peppers, Rice & other chopped meat. Is drinking water. Shi took some more naps. Then took his evening pills around 6 p.m. Then ate some pizza for supper & mt Dew & some donut. Shi got up & ate some Blueberry muffin at 9 or so. Went pee & put on bedtime shorts.

Wednesday - June 28

Well, ~~I~~ Shis did decent last night. Got up with him around 4 p.m. Cleaned the wet stuff up & clean clothes & put him back to bed with clean bed clothes. We got up this morning, around 8 a.m. I gave him a shower & put him in the wheelchair in the Bathroom on & gave him his meds at 8:20 am. He ate 20 min after that. Warm Soy milk, coffee, grits & boiled ^(he did not like) egg, a little muffin. And strawberry yogurt. Shis went to use the potty after that. (or try to) - No success. He had Betadine to the sores after that & lotion & I put clean clothes on him & he went to sleep. Shis got up to eat ~~the~~ lunch & take pills. Took pills at 11:45 a.m. Ate lunch afterwards. ^{Food that} (1:00 Brought earlier) Shis laid back down after lunch. Shis has been coughing some. Shis & me took naps during the afternoon. Gave him his evening pills at 4:25 pm. He ate at 4:45 pm. ~~had~~ Supper that Tao brought. Laid down & rested awhile. Then he got up & I shaved him.

Thursday - June 29

Shis had kind of a bad night last night. He was up at 1:30 & again at 3 or 4 to pee. A little restless.

Finally went to sleep after that. I gave him his breakfast pills around 7:30 a.m. or so. He didn't eat yet. Is sleeping in the bed. Shis ate an 10 a.m. food that Tao brought. Then I gave him a shower & lotion & clean cloth. Also betadine on sores. Shis laid back down after his bath. Got up to take his lunch pills at 12:40 p.m. Ate a muffin that Jen ^{gave us} ~~brought~~ at 1 p.m. Shis had his little enema & then had a poo after that. Then laid back down a while. Took a good nap & then ate lunch, late, at 3:45 p.m. Shis rested, then went out on the porch to walk a little. Then came back inside & took his evening meds. (6:35 p.m.)

Friday - June 30

Shis was a little restless last night.

Called Kwei at 2am. She called me.

Apparently, Shis couldn't wake me up.

I told her he kept me awake at night.

Slept OK the rest of the night, but very

sleepy this morning. Was trying to walk

with his eyes closed. Finally got him to pee

& to the shower & dressed. Lotion to his

body & ointments to sores (which are looking

better) He took his pills around 9 a.m. Ate

at 9:20 a.m. Had egg & Apple in oatmeal & OJ.

Got Shis settled back at the restaurant

& checked out of the motel. Clean clothes

AGAIN! YA!! He took his ^{lunch} pills at 12:55 p.m.

Is eating a good lunch, too! I washed

up the dirty clothes. Vacuumed the floors

and emptied the trash. Shis still kind of

has a cough. Coughed up a lot of mucus

(clear) at 3:30 p.m. Took BP. It was 110/70.

Massaged his feet some. ~~Re~~ filled medication tray.

Evening pills at 5:55 p.m. Shis supper after that.

Back to bed at 7pm.

July 1 — Saturday

I got here at 11:50 a.m. Shis was lying down. Emptied potty. Took Shis to the shower & gave him a bath. Clean clothes & lotion & ointments to his sores. Worst looking one is getting a scab, now. Emptied trash, and shaved Shis too! Then massaged his feet. 120/70 BP at resting position.

Shis did some stomach exercises in the bed.

July 2 - Sunday

I got here early today 11:40 am.

Shis was up eating. I emptied the potty & waited for him to finish his food.

Then he went to the shower. Had ointment to sores & clean clothes, fresh diaper & lotion to his body. Emptied the trash & vacuumed.

No shave today, No laundry. * One of his pills (Ropinade) was laying on the floor * don't know from what time. (Last night or this morning.

Just waiting till lunch to give him another one. Shis took his lunch

pills at 1:25 pm. We played a few minutes of ratchetball, then took his bp. It was 130/70. milk & cookies at 1:45 pm.

July 3 - Monday

I got here around noon. Shis had fallen on the floor again. Was 'out cold' but awoke when I shook him. Range of motion testing to limbs to assess damage.

Then helped him get up. Seemed OK but a long red place to the left side of his back. May have went to sleep & fell out of the chair. He was walking poorly though. Took him to shower. Did outments clean clothes. Cleaned Shis office chair. He finished eating after his shower. I vacuumed. Then he laid down after I changed the bed. Doing laundry today.

Also sprayed & cleaned stains on the carpet. Took BP at 12:05 p.m. 110/70. Shis got a Shane after lunch pills at 1:55 p.m. Took out the trash. Had a little cookie for snack.

He ate supper at 5:25, after taking evening pills at 5:05 p.m. Leftover noodles & moo goo gai pan & rice. He took a nap this afternoon. Also some pie I brought him for dessert.

July 4, Tuesday

I got here early at 10:55 a.m. Shis was up eating his breakfast. Laid down after breakfast for 45 minutes. Then I gave him a shower, after he got an enema to poo. Was successful! Ointments to sores & clean clothes & lotion. Vacuumed & took out the trash. Shis cranky last night & today. Took his lunch pills at 12:45 p.m. Ate some egg, the cherries & cookies after that. Played rackets ball a few minutes. ^{Took} BP afterwards, was low, 88/58? Don't know why.

July 5 - Wednesday

I got here early, at 11am. ~~#~~ Shis
just finishing his breakfast. Decided
he wanted to lay down a bit. Took
a little nap. I vacuumed & cleaned
bathroom sink, and took out the trash.
Also emptied the potty. No laundry today.
Got him up at 12:20 & took him to
the shower. Did his ^{pm} lotion & ointment
& gave him clean clothes & diaper. Shis
practiced his walking after the shower
a little. TOOK BP afterwards it was
110/60. Shis laid down after walking
for a little bit. Got up & took his
lunch pills around 1:10 pm. I Shave
him after that. Facial massage with
lotion. Shis ate 1 piece of pizza at
1:30 pm. Also muffled ^{cold} & soy milk.

July 6 - Thursday

I got here at 9:25 a.m. Took BP 136/78, at 9:40 a.m. Shis says he did not sleep good last night. Time he took meds this morning is unknown? Shis ate his breakfast around 10 a.m. I fixed the pills this morning for the week. After breakfast, Shis took a shower & had lotion, ointments & clean clothes. Then laid down & took a nap. Got back up & took lunch pills around 12 p.m.

Doing laundry today. Shis ate his lunch at 12:20 p.m. Vacuumed & took out the trash. Cleaned out leftover food from the frig.

July 7 - Friday

I got here at 10:50 am. Shis was trying to get in the bed & had not taken his morning pills yet. I took him straight to the shower. Got him cleaned up & clean clothes & lotion. He took morning pills at 11:20 am. He had already ate something sometime before that, before shower, but had not had them yet. Changed his bed cause there was 1 spot of piss on it. Am also washing his comforter. Will get carpet sprinkled today when I go out. Vacuumed the floor, too! Cleaned his sip cup. Shis got up & ate something at 1 p.m. Took BP 100/64. Also Shaved him. Walked a little. Rested in bed & did stomach exercises with legs. Shis took his lunch pills at 2:05 p.m. Shis ate his lunch at 2:25.

July 8 - Saturday

I got here about 10:45 or so. Shis was on the floor again. Helped him up & he sat in the chair while I vacuumed. Cleaned black spots in the hallway. Took him to the shower ground 12 p.m. Clean diaper & clothes. Also lotion. Shis took his [lunch pills] + 1 B-12 at 12:25 p.m. Took out the trash. No laundry - No Shave. Shis ate at 12:45 p.m.

July 9 - Sunday

I got home early at 10:35 a.m. Shis was sleeping in the bed. Slept for about 1 hour. I cleaned the potty & toilet in the bathroom. Got Shis up to take a shower. Gave him clean clothes & lotion. He went to eat his lunch. I vacuumed & took out the trash & did laundry. When he got done eating, I trimmed & filed his ~~teeth~~ finger nails & shaved him. BP was 100/70. Had a hard time taking it for some reason. Cutting areolas for later. Also gave him a Post message. Shis laid down a little while. Woke up in an agitated state. Got him up to pee. Trying to take his lunch pills, but is refusing for some reason. Finally took them at 1:40 p.m.

July 10, Monday

I got home around 11 a.m. It was a busy morning. Shis was in the bed (sort of) to wait in or out. I helped him to the bathroom & gave him an ^{mini} enema. He had a poo, ~~then~~ then he took a shower. While he was doing his business I rearranged the furniture in the bed room so the microwave could plug in the wall. After shower Shis had a fresh diaper & clean clothes & lotion. Then he laid down on the bed & took a nap. I scrubbed the carpets. Also vacuumed & took out the trash. 1:30/76 BP 1:05 p.m. Shis took his lunch pills at 1 p.m. or so. No shave today, No laundry. Shis ate some rice ^{w/ meat} & cookies. Then laid down awhile. Massaged his feet. Did some exercises in the bed. Shis ate shrimp & veg at 3:40 p.m. He ate a little, but didn't like that well. So I ordered some pizza. He ate some at 4:45 p.m. Took ecotrin early. Took the rest of his evening meds at 6:30 p.m. w cool apple juice from the fridge.

July 11 - Tuesday

I got here around 11. Shis was
sitting on the bed. Took a nap. I
vacuumed. He got up around noon
& took a shower. Had cleaned clothes,
bottle, fresh diaper. He ate the rest of
his breakfast & I changed the bed &
did laundry. Changed the ~~trash~~ trash.
Shaved Shis. Took BP 110/70 1:15 ^{pm}
Took lunch pills around 1:20 ^{pm}
Laid down a few minutes.

July 12, Wednesday

Well. I got here a few minutes after 11. Shis had fallen ~~on~~ head first off the desk again. But he was ok. Thank you Lord! Pillow not in chair. ~~We~~ went to lie down awhile, and then got up around noon to take a shower. He had clean clothes & fresh diaper. Forgot lotion today. Am having to wash his Bathrobe, cause ~~it~~ found a dirty (poo poo) place on it. I vacuumed & took out the trash. Emptied the potty first. Got Shis up from a nap at 1:15. He ~~peed~~ and took his [Lunch pills] & B-12 around 1:20 or so. BP was 140/76 at 1:30 p.m.

Came back at 7pm to fix meds for the week. Shis took his evening meds at 7:05 & also had a mini enema.

July 12, Wednesday

Well. I got here a few minutes after 11. Shis had fallen ~~on~~ head first off the desk again. But he was ok. Thank you Lord! Pillow not in chair. ~~We~~ went to lie down awhile, and then got up around noon to take a shower. He had clean clothes & fresh diaper. Forgot lotion today. Am having to wash his Bathrobe, cause ~~he~~ found a dirty (poo poo) place on it. I vacuumed & took out the trash. Emptied the potty first. Got Shis up from a nap at 1:15. He peed and took his [lunch pills] & B-12 around 1:20 or so. BP was 140/76 at 1:30 p.m.

Came back at 7pm to fix meds for the week. Shis took his ^{evening} meds at 7:05 & also had a mini enema.

July 13, Thursday

I got here around 10:50 a.m. Heard a loud thud when I was standing waiting for them to open the door. Came in & Shis had fallen ~~on~~ on the ~~box~~ ^{by the post box} & head w/in a precarious position. Far back & teeth $\frac{1}{2}$ way back in mouth. He appeared to be unresponsive & not breathing. Also could not ~~feel~~ feel any heartbeat. I shook him & set him up. I heard breath sounds coming from his airway. Also noticed he was breathing lightly. Felt a slow pulse. Took BP & it stayed 100/66 & 100/70 for awhile. He was semi-conscious. We laid him down to rest. He slept for about 2 hours. I helped him up & he seemed ok. Went to take a shower. Fresh diaper & clean clothes & brought him to chair to eat. Lotion to body & shave today. He ate very well. Laid back down awake. I vacuumed & changed the trash. Shis went to have a poo-poo at 3pm & evening. (or try) Shis took lunch pills at 4:10 p.m.

Right before he
woke up
BP
was
120/70